S. HRG. 99-930

INDIAN WATER CLAIMS IN SAN DIEGO COUNTY, CA

JOINT HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

AND THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 2676

TO PROVIDE FOR THE SETTLEMENT OF WATER RIGHTS CLAIMS OF THE LA JOLLA, RINCON, SAN PASQUAL, PAUMA, AND PALA BANDS OF MISSION INDIANS IN SAN DIEGO COUNTY, CALIFORNIA, AND FOR OTHER PURPOSES

AUGUST 11, 1986
WASHINGTON, DC

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INDIAN WATER CLAIMS IN SAN DIEGO COUNTY, CA

MONDAY, AUGUST 11, 1986

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS
AND
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

Present: Senator Melcher.

Staff present: Patricia Zell, staff attorney; Virginia Boylan, staff attorney; Peter Taylor, staff director; and Max Richtman, minority staff director, Select Committee on Indian Affairs; Russell R. Brown, professional staff member and Bill Conway, counsel for the minority, Committee on Energy and Natural Resources.

Senator MELCHER [acting chairman]. The joint hearing will come to order.

I am pleased to have this opportunity to receive testimony this morning on S. 2676, a bill to settle the water rights claims of five bands of Mission Indians whose reservations are in San Diego County, CA near the San Luis Rey River.

[The text of S. 2676 follows:]

II

99TH CONGRESS
2D SESSION

S. 2676

To provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 22 (legislative day, JULY 21), 1986

Mr. WILSON (for himself and Mr. CRANSTON) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs with instructions that when reported the bill be referred to the Committee on Energy and Natural Resources for a period not to exceed fifteen calendar days

---

A BILL

To provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "San Luis Rey Indian Water Rights Settlement Act".

SEC. 2. DEFINITIONS.

For purposes of this Act—

(1) Bands.—The term "Bands" means the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians which are recognized by the Secretary of the Interior as the governing bodies of their respective Reservations in San Diego County, California.

(2) Central valley project.—The term "Central Valley Project" means the Federal reclamation project located in California which was reauthorized by section 2 of the Rivers and Harbors Act of August 26, 1937 (50 Stat. 850) and the Rivers and Harbors Act of October 17, 1940 (54 Stat. 1199) as amended and supplemented.

(3) Firm project water.—The term "firm project water" means water developed by the Central Valley Project, the availability of which is subject to proportionately shared shortages.

(4) Indian water authority.—The term "Indian Water Authority" means the San Luis Rey River Indian Water Authority, an inter-tribal Indian entity established by the Bands.

(5) Local entities.—The term "local entities" means the City of Escondido, California; the Escondido Mutual Water Company; and the Vista Irrigation District.

(6) PROJECT USE POWER.—The term "project use power" means Central Valley Project hydroelectric power and power from other sources used in the operation of the Central Valley Project irrigation facilities and for other purposes specifically authorized by Congress.

(7) SAN DIEGO AQUEDUCT.—The term "San Diego Aqueduct" means the water conveyance facilities operated and maintained by the San Diego County Water Authority and used to convey imported water into San Diego County.

(8) SETTLEMENT AGREEMENT.—The term "settlement agreement" means the agreement to be entered into by the United States, the Bands, and the local entities which will resolve all claims, controversies, and issues involved in all the pending proceedings among the parties.

SEC. 3. CONGRESSIONAL FINDINGS; LOCAL CONTRIBUTIONS; PURPOSE.

(a) CONGRESSIONAL FINDINGS.—The Congress finds the following:

(1) The Reservations established by the United States for the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians on or near the San

Luis Rey River in San Diego County, California, need a reliable source of water.

(2) Diversions of water from the San Luis Rey River for the benefit of the local entities commenced in the early 1890s and continue to be an important source of supply to those communities.

(3) The inadequacy of the San Luis Rey River to supply the needs of both the Bands and the local entities has given rise to litigation to determine the rights of various parties to water from the San Luis Rey River.

(4) The pendency of the litigation has—

(A) severely impaired the Bands' efforts to achieve economic development on their respective Reservations,

(B) contributed to the continuation of high rates of unemployment among the members of the Bands,

(C) increased the extent to which the Bands are financially dependent on the Federal Government, and

(D) impeded the Bands and the local entities from taking effective action to develop and conserve scarce water resources and to preserve those resources for their highest and best uses.

(5) In the absence of a negotiated settlement—

(A) the litigation, which was initiated almost 20 years ago, is likely to continue for many more years,

(B) the economy of the region and the development of the Reservations will continue to be adversely affected by the water rights dispute, and

(C) the implementation of a plan for improved water management and conservation will continue to be delayed.

(6) An agreement in principle has been reached under which a comprehensive settlement of the litigation would be achieved, the Bands' claims would be fairly and justly resolved, the Federal Government's trust responsibility to the Bands would be fulfilled, and the local entities and the Bands would make fair and reasonable contributions.

(7) The Bands and the local entities have agreed that the settlement agreement shall include the following provisions:

(A) The waters of the San Luis Rey River Basin which originate above the intake to the Escondido Canal and are developed by the Bands and the local entities shall be shared equally between them.

(B) The local entities shall guarantee that a minimum of 7,000 acre-feet of such developed water shall be available to the Bands annually to the extent needed for use on their Reservations.

(C) In satisfying the provisions of subparagraphs (A) and (B)—

(i) the local entities shall contribute the water development, conveyance, and storage benefits made possible by the following facilities, all of which they have developed, financed, and constructed and shall maintain and, if necessary, replace—

(I) the Henshaw Dam and Reservoir,

(II) the Escondido Canal, and

(III) the Wohlford Dam and Reservoir;

(ii) the local entities shall also contribute the water development benefits of the existing Warner Ranch wellfield and related facilities, which are wholly owned and have been developed, financed, and constructed by the local entities; and

(iii) the Bands and the local entities shall share the costs of operating, maintaining, and, if necessary, replacing and further developing the Warner Ranch wellfield and related facilities.

(D) The local entities shall be obligated to purchase the Bands' share of the local water that is surplus to the Bands' needs at a cost of 90 percent of the local entities' cost of obtaining water from their alternative source for the first 7,000 acre-feet per year and 80 percent of such cost for the remainder.

(E) The Bands shall be responsible for providing the funding for covering the Escondido Canal where it traverses portions of the San Pasqual Indian Reservation or placing such Canal underground.

(b) PURPOSE.—It is the purpose of this Act to provide for the settlement of the reserved water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, in a fair and just manner which—

(1) will provide the Bands with a reliable water supply sufficient to meet their present and future needs;

(2) promotes conservation and the wise use of scarce water resources in the upper San Luis Rey River System;

(3) establishes the basis for a mutually beneficial, lasting, and cooperative partnership among the Bands and the local entities to replace the adversary relationships that have existed for several decades; and

(4) fosters the development of an independent economic base for the Bands.

SEC. 4. SETTLEMENT OF WATER RIGHTS DISPUTE.

Sections 5, 6, 7, and 8 of this Act shall take effect only when—

(1) the United States; the City of Escondido, California; the Escondido Mutual Water Company; the Vista Irrigation District; and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians have entered into a settlement agreement providing for the complete resolution of all claims, controversies, and issues involved in all of the pending proceedings among the parties;

(2) the Secretary of the Interior determines that all legal requirements necessary to implement or fulfill the provisions of the settlement agreement have been satisfied, including—

(A) the enactment of any legislation which is required in order for any party to fulfill its obligations under the settlement agreement or this Act, and

(B) the execution of any contracts necessary to fulfill the provisions of the settlement agreement or this Act; and

(3) stipulated judgments or other appropriate final dispositions have been entered in all pending proceedings by all parties.

SEC. 5. DUTIES OF THE UNITED STATES AND THE INDIAN WATER AUTHORITY WITH RESPECT TO DELIVERY OF WATER.

(a) DELIVERY OF WATER.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of the Interior shall deliver, through Federal and non-Federal facilities, annually and in perpetuity, 22,700 acre-feet of firm project water to the Indian Water Authority at a point in the San Diego Aqueduct in the vicinity of the Bands' Reservations and on a schedule to be agreed upon by the Secretary of the Interior and the Indian Water Authority.

(2) OBLIGATIONS OF THE INDIAN WATER AUTHORITY.—

(A) OPERATION AND MAINTENANCE.—The Indian Water Authority shall reimburse the United States for the operation and maintenance costs, but not for construction costs, incurred in the delivery of water pursuant to paragraph (1) at the rate charged for Central Valley Project irrigation water. The construction costs associated with providing such water shall be nonreimbursable.

(B) CONVEYANCE.—The Indian Water Authority shall pay all costs associated with conveying the water described in paragraph (1) through non-Federal facilities, and all costs, including construction costs, associated with conveying the water from the point of delivery to the Bands' Reservations.

(3) LIMITATIONS ON WATER DELIVERY OBLIGATION.—The Secretary of the Interior shall not be obligated to deliver the water described in paragraph (1) if—

(A) such delivery would require the construction of new Federal facilities,

(B) consent to the use of non-Federal facilities cannot be obtained from the owners and operators of such facilities, or

(C) necessary contracts and permits have not been executed or amended.

(4) LIMITATION ON ADDITIONAL WATER COSTS.—The Secretary of the Interior shall take such steps as may be necessary to ensure that the provision of water under subsection (a)(1) will not result in any added water costs for any Central Valley Project customers.

(b) USE OF PROJECT USE POWER FOR PUMPING.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of the Interior shall use project use power from the Central Valley Project to deliver the water referred to in subsection (a)(1) from the Sacramento-San Joaquin Delta to the Indian Water Authority. If the Central Valley Project hydroelectric resources are inadequate to meet this obligation, the Secretary of Energy is authorized to obtain or acquire such additional power as may be needed to accomplish the delivery of the water referred to in subsection (a)(1) until such time as adequate amounts of project use power can be made available from the Central Valley Project.

(2) OBLIGATIONS OF THE INDIAN WATER AUTHORITY.—The Indian Water Authority shall reimburse the United States at the project use rate for irri-

gation water for the operation and maintenance costs, but not for construction costs, incurred in providing the power referred to in paragraph (1). The construction costs associated with providing such power shall be nonreimbursable.

(3) LIMITATION ON USE OF CERTAIN POWER.—In fulfilling the requirement of paragraph (1), the Secretary of Energy shall not utilize any power that is needed—

(A) for other project use purposes, or

(B) until after December 31, 2004, for Central Valley Project firm power customers to the extent of any contract or obligation in existence on the date of the enactment of this Act.

(4) LIMITATION ON ADDITIONAL POWER COSTS.—The Secretary of the Interior and the Secretary of Energy shall take such steps as may be necessary to ensure that the provision of power under paragraph (1) will not result in any added power costs—

(A) for project use purposes, or

(B) until after December 31, 2004, to Central Valley Project firm power customers to the extent of any contract or obligation in existence on the date of the enactment of this Act.

(c) DELEGATION OF AUTHORITY.—The Secretary of the Interior and the Secretary of Energy are authorized to enter into such agreements and to take such measures as each such Secretary may deem to be necessary and appropriate to fulfill any obligation of such Secretary under this Act.

SEC. 6. ESTABLISHMENT, STATUS, AND GENERAL POWERS OF SAN LUIS REY INDIAN WATER AUTHORITY.

(a) ESTABLISHMENT OF INDIAN WATER AUTHORITY APPROVED AND RECOGNIZED.—

(1) IN GENERAL.—The establishment by the Bands of the San Luis Rey Indian Water Authority as a permanent inter-tribal entity pursuant to duly adopted ordinances and the power of the Indian Water Authority to act for the Bands are hereby recognized and approved.

(2) LIMITATION ON POWER TO REPEAL OR REVOKE ORDINANCES.—The ordinances referred to in paragraph (1) may not be revoked or repealed, and the power described in such paragraph may not be surrendered, except by Act of Congress.

(3) LIMITATION ON POWER TO AMEND OR MODIFY ORDINANCES.—Any proposed modification of any ordinance referred to in paragraph (1) must be approved by the Secretary of the Interior and no such approval may be granted unless the Secretary finds

that the proposed modification will not interfere with or impair the ability of the Indian Water Authority to carry out its responsibilities and obligations pursuant to this Act and the settlement agreement.

(b) STATUS AND GENERAL POWERS OF INDIAN WATER AUTHORITY.—

(1) STATUS AS INDIAN ORGANIZATION.—To the extent provided in the ordinances of the Bands which established the Indian Water Authority, such Authority shall be treated as an Indian entity under Federal law with which the United States has a trust relationship.

(2) POWER TO ENTER INTO AGREEMENTS.—The Indian Water Authority may enter into such agreements as it may deem necessary to implement the provisions of this Act and the settlement agreement.

(3) INVESTMENT POWER.—Notwithstanding paragraph (1) or any other provision of law, the Indian Water Authority shall have complete discretion to invest and manage its own funds.

(4) LIMITATION ON SPENDING AUTHORITY.—All funds of the Indian Water Authority which are not required for administrative or operational expenses of the Authority or to fulfill obligations of the Authority under this Act, the settlement agreement, or any other agreement entered into by the Indian Water Authority

shall be invested or used for economic development of the Bands, the Bands' Reservation lands, and their members. Such funds may not be used for per capita payments to members of any Band.

(c) INDIAN WATER AUTHORITY TREATED AS TRIBAL GOVERNMENT FOR CERTAIN PURPOSES.—The Indian Water Authority shall be considered to be an Indian tribal government for purposes of section 7871(a)(4) of the Internal Revenue Code of 1954.

SEC. 7. POWERS OF INDIAN WATER AUTHORITY AND BANDS OVER WATER AND POWER RESOURCES.

(a) USE OF WATER.—In addition to any right, power, or authority the Indian Water Authority or the Bands may have under any other provision of this Act or any other law or rule of law, such Authority shall have the right to devote—

(1) any water resources obtained pursuant to this Act or the settlement agreement, and

(2) any other water resources that they may have or acquire,

to any beneficial use, including any agricultural, municipal, industrial, commercial, mining, or recreational use.

(b) DISPOSITION OF WATER.—

(1) IN GENERAL.—The Indian Water Authority may lease, sell, exchange, control, and manage any

water resource described in paragraph (1) or (2) of subsection (a) on or off the Reservations of the Bands.

(2) Restriction on alienation of water rights.—The Indian Water Authority may not permanently alienate any right to any water resource described in paragraph (1) or (2) of subsection (a), except to the local entities as part of the settlement agreement.

(3) Approval of water contracts by Secretary.—Any sale, lease, or exchange of any water resource shall be made pursuant to a contract entered into by the Indian Water Authority and approved by the Secretary of the Interior as trustee for such Authority.

(c) Contracts Relating to Power.—Subject to the approval of the Secretary of the Interior, the Indian Water Authority may enter into such contracts relating to the power described in section 5(b)(1) only as are necessary to provide for the pumping and delivery of 22,700 acre-feet of firm project water described in section 5(a)(1).

SEC. 8. SECRETARY OF THE INTERIOR'S EXCLUSIVE AUTHORITY OVER GOVERNMENT AND INDIAN LANDS.

(a) In General.—Notwithstanding any other provision of law, the Secretary of the Interior is exclusively authorized, subject to subsection (b), to lease, grant rights-of-way across, or transfer title to any Indian tribal or allotted land or any land subject to the authority of such Secretary which is used, or may be useful, in connection with the operation, maintenance, repair, and replacement of the system used to divert, convey, and store the waters of the San Luis Rey River for the local entities, together with all appurtenant facilities, including the Rincon and Bear Valley powerplants.

(b) APPROVAL BY INDIAN BANDS; COMPENSATION TO INDIAN OWNERS.—Any disposition of Indian tribal or allotted land by the Secretary of the Interior under subsection (a) shall be subject to the approval of the governing Indian Band. Any individual Indian owner or allottee whose land is disposed of by any action of the Secretary of the Interior under subsection (a) shall be entitled to receive just compensation from the Indian Water Authority or the local entities.

SEC. 9. RULES OF CONSTRUCTION.

(a) RESERVED WATER RIGHTS.—No provision of this Act shall be construed as altering or affecting the determination of the following questions of law:

(1) Whether reserved water may be put to use, or sold for use, off of any Reservation to which reserved water rights may attach other than the Reservations established for the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians.

(2) Whether reserved water may be put to use, or sold for use, off the La Jolla, Rincon, San Pasqual, Pauma, and Pala Indian Reservations in the absence of this Act.

(b) LIMITATION ON SALES OR DISPOSITIONS OF POWER.—No provision of this Act shall be construed as authorizing the Indian Water Authority to sell electric power to any retail customer or to dispose of any electric power provided pursuant to this Act separately from the water described in section 5(a)(1).

(c) EMINENT DOMAIN.—No provision of this Act shall be construed as authorizing the acquisition by the Federal Government of any water or power supply or any water conveyance or power transmission facility through the power of eminent domain or any other nonconsensual arrangement.

(d) STATUS AND AUTHORITY OF INDIAN WATER AUTHORITY.—No provision of this Act shall be construed as creating any implication with respect to the status or authority the Indian Water Authority would have under any other law or rule of law in the absence of this Act or if section 6 does not take effect.

SEC. 10. COMPLIANCE WITH BUDGET ACT.

To the extent any provision of this Act provides new spending authority described in section 401(c)(2)(A) of the Congressional Budget Act of 1974, such authority shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

○

Senator MELCHER. Our first witness this morning is Senator Alan Cranston who is a cosponsor along with Senator Wilson of S. 2676. Senator Cranston.

STATEMENT OF HON. ALAN CRANSTON, U.S. SENATOR FROM CALIFORNIA

Senator CRANSTON. Thank you very much, Mr. Chairman.

I am pleased to have this opportunity to present testimony in support of S. 2676, legislation I am cosponsoring to provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County. The settlement embodied in this bill is the result of lengthy negotiations between the parties in the dispute, the five bands of Mission Indians and the communities of Vista and Escondido, and was developed in close consultation with Department of Interior officials.

It is premised on the belief that the Indian water rights dispute should be resolved in a manner that is least disruptive to existing non-Indian uses of the San Luis Rey River water and that the settlement should enable the Indians to develop viable, economically self-sufficient communities.

The settlement consists of two basis parts: One, division of the local water and the costs associated with this development and distribution among the Indians, Escondido, and Vista; and, two, purchase by the Indians and delivery to their reservations of Central Valley project water.

I know of no opposition to or any controversy surrounding the first part of the settlement. I am, however, very much aware of and appreciate the concerns of existing Central Valley power customers and potential water customers about the second part, the use of Central Valley power and water outside the project service area.

Regarding power, the bill provides that the Federal Government use project power to deliver the water to the reservations. The amount that will be required, approximately 72.6 million kilowatts of electricity, is less than 1 percent of the power generated by the Central Valley project and would be taken at times when generation exceeds the amount needed to satisfy the Federal Government's contract obligations.

Further, the bill specifically prohibits the Secretary of Energy from using project power now under contract until after December 31, 2004, and provides that there will be no increase in utility rates at least until the expiration of existing contracts in that year. The intent is to protect the existing preference power customers' rights and legitimate expectations under existing contract.

Since the bill was introduced, I have been informed that one of the Central Valley preference customers has an option to renew its power contract through December 31, 2014. Thus, I favor amending the bill to protect that right.

Regarding water, the bill specifically provides that provision of water to the Mission Indians shall not result in any added water cost for any Central Valley customers.

I know there is a great demand for water within the Central Valley service area, a demand that exceeds the uncontracted 1.1

million acre-feet of water. As a possible solution, I have suggested the bill be amended to provide for the conservation of 23,000 acre-feet of water in the Central Valley service area over the next 20 years to compensate for the 23,000 acre-feet provided the Mission Indians. Such a water conservation effort, paid for by the Federal Government, should help mitigate any impact the bill might have on potential Central Valley water contractors.

I would be happy to work with the committee in developing appropriate bill language for this purpose if there is support for my proposal.

Mr. Chairman, I continue to feel that this negotiated settlement is far preferable to the litigation that is likely to continue otherwise for years. Under this proposed settlement which all the parties to the litigation support, the dispute can be resolved sooner, in a manner that fulfills the Federal Government's trust responsibility to the bands, and at a small cost to the Federal Government, both in absolute terms and in comparison to the costs of other recent Indian water rights settlements.

I thank you for the excellent cooperation that you and your staff have provided to date, and I hope that we can move forward with the bill.

Thank you, Mr. Chairman.

Senator **Melcher**. Senator, there is no indication that there is any objection to the bill that cannot be accommodated. Is that your judgment?

Senator **Cranston**. That is right, Yes.

Senator **Melcher**. And that the methods you have outlined in your testimony are for resolving any potential difficulties?

Senator **Cranston**. I think they can resolve all the difficulties.

Senator **Melcher**. Thank you very much, Alan, for your testimony. I think it is very helpful, and we will be working with you on the bill as we go through the next few weeks. I think it is the intention to have a bill out this Congress that can become law.

Senator **Cranston**. Thank you very much, John.

Senator **Melcher**. Thank you.

Our next witness is Senator Pete Wilson, and here he is right on time.

Senator, we are delighted to have you. Welcome to the committee.

STATEMENT OF HON. PETE WILSON, U.S. SENATOR FROM CALIFORNIA

Senator **Pete Wilson**. Thank you, Mr. Chairman, and thank you very much for setting aside this time in the waning days of the 99th Congress to hear testimony on S. 2676, legislation introduced by Senator Cranston and myself to authorize an important Indian water rights settlement on the San Luis Rey River in northern San Diego County.

This bill represents a resolution of 17 years of litigation between five bands of Mission Indians and the city of Escondido and the Vista Irrigation District. The dispute at the core of this litigation stems from too little water for too many needs. The water rights settlement authorized by this legislation solves this classic supply and demand problem by importing northern California water to supplement the San Luis Rey River water supply.

Much of the credit for bringing this bill together goes to Congressman Ron Packard who has nearly identical legislation pending in the House. I understand that you will be hearing today from the Mayor of Escondido and representatives of the Vista Irrigation District, representatives of the Indian bands, and others, all of whom are prepared to go into considerable detail on the events leading to the introduction of this bill and the specific provisions of the legislation itself.

For my part, let me just highlight a number of points about this legislation that I think are especially worth noting. The most attractive feature about this bill is the promise it holds for settling what appears to be another interminable court case involving Indian water rights. With this settlement, firm water supplies will be established for both sides. Community planning and development for both the cities and the Indian bands will be able to proceed on an orderly basis, and valuable resources that would otherwise be dedicated to further battles in court can be redirected to more productive pursuits.

Not to be overlooked is the effect that this bill has in minimizing the potential Federal liability in this case. While no one can know for certain how the judge might find in this case were it to go to trial, the possibility clearly exists that the Federal Government might ultimately be found liable for millions of dollars.

This bill does include a cost to the Federal Government of approximately $2 million a year in power revenues foregone, but this is a price well worth paying in view of the even greater potential liability that could potentially be assigned to the Federal Government.

As for the Indian bands, the settlement made possible by this legislation will allow for economic development in a depressed area that for years has been denied access to needed water supplies. The contrast is sharp in this part of northern San Diego County where an agricultural economy thrives everywhere, everywhere, that is, except on the Mission Indian lands.

With the water and the water sale revenues resulting from this legislation, the Indian bands will have an opportunity to more fully develop an agricultural economy on a par with their more affluent neighbors who for years have been benefiting from adequate water supplies.

Finally, I would like to note for the record that one question relating to this legislation still remains unanswered in my mind. The central feature of this bill is the provision for the importation of 22,700 acre-feet of water from the Central Valley project in northern California to supplement the water supplies on the San Luis Rey River. This water and the CVP power that is used to pump it is the reason why this settlement will work.

But what remains unclear to me is why surplus Colorado River water, when it is available, cannot be used instead of the CVP water. I have asked the Department of the Interior to address this issue, but as of last week, I had not heard from them in writing.

It has been suggested to me that notwithstanding any other provision of law, there may be 22,700 acre-feet of Colorado River water in some years that are surplus to the needs of those entities which hold entitlements to Colorado River water. If this is the case, using Colorado River water in those years that it is available is clearly preferable to using Central Valley project water if only because the pumping costs to move the Colorado River water would be considerably cheaper.

I understand that the Department of Interior is ready to address this issue, and I am certain it will be resolved by the time the committee is ready to move to markup on this bill.

Whether it be Colorado River or CVP water, the settlement authorized by this legislation is a good settlement and one worth speedy consideration by this committee. I appreciate your willingness to hear this bill and look forward to working with you as it moves toward final passage.

Again, I thank you, Mr. Chairman. I know there is much on your agenda, and we are grateful. We trouble you at this time because we feel that this settlement is important and can resolve needless further litigation.

Senator **MELCHER**. Senator, as far as you can tell, there are no problems of such magnitude that they can't be resolved prior to action on the bill in September?

Senator **PETE WILSON**. That is our fervent hope, and it is our expectation. As I said, we are expecting that even today, you will hear from the Department of Interior with respect to the one question that I have remaining.

Senator **MELCHER**. Thank you very much, Senator. We appreciate your testimony.

Senator **PETE WILSON**. Thank you, sir.

Senator **MELCHER**. Is Representative Ron Packard here? Welcome to the committee, Ron. Please proceed.

STATEMENT OF HON. RON PACKARD, MEMBER OF CONGRESS FROM CALIFORNIA

Mr. **PACKARD**. Thank you, Mr. Chairman.

I am grateful that you have called this hearing and allowed me to appear before your distinguished committee this morning.

For the past 17 years, the Escondido Mutual Water District, the Vista Irrigation District, and the five Indian bands—all in my congressional district San Diego County—and the U.S. Department of the Interior have been embroiled in extremely costly and lengthy litigation over water rights in the San Luis Rey River.

I became involved with this dispute 2 years ago when it became evident that a solution through the courts was still many years away.

With all parties willing to work together, an ad hoc committee was formed to resolve this long-standing dispute. After 1½ years of meetings, a settlement was negotiated by the task force, a settlement predicated upon a model partnership between the Indians and the local water use agencies.

Under the terms of the settlement agreement, the parties will share existing water facilities, costs of production, storage, and delivery. It is a system of pay-as-you-go for the Indians and avoids the necessity of constructing costly facilities at Federal expense. I know how earnestly the Indian bands desire self-sufficiency through development of the land on their own reservations.

Others testifying today will share the nuts and bolts of the settlement, but I feel it is appropriate to comment on the high degree of cooperation and the spirit of resolution offered by all parties. I want to commend the Federal agencies, especially the Bureau of Reclamation, the Bureau of Indian Affairs under the direction of Ross Swimmer whom you will hear from shortly, the Solicitor's Office at Interior, the Western Area Power Agency, and the Office of Management and Budget.

These same attitudes were shared throughout the process by the two water districts and the five Indian bands.

I would also like to note the contribution made by Mayor Jim Rady whom you will hear from later, the mayor of Escondido, who deserves credit for initiating the out of court settlement process.

Earlier this year, I introduced H.R. 4468 which is currently pending before the House Subcommittee on Water and Power Resources. We anticipate a House hearing in early September. Of the 45 California Members, 35 are currently cosponsors of this legislation.

This agreement has been referred to as a unique model settlement which results in a win-win solution for everyone.

As you know, Senators Cranston and Wilson, our two California Senators have jointly sponsored the bill now before us. I would strongly urge you, Mr. Chairman, and members of your committee, to support the legislation and expeditiously move it to completion this session of Congress.

Again, I want to thank you for the opportunity of testifying and for the calling of these hearings.

Senator **MELCHER**. Ron, you have heard both the Senators, Alan Cranston and Pete Wilson, state that they see no major stumbling blocks to the passage of the bill that couldn't be resolved quickly so the bill can be passed in September. Do you have the same view as they do?

Mr. **PACKARD**. There is no question that there are some of the Central Valley water users that will have concerns about any water going out of the Central Valley project. Their primary concern as they have expressed it to me, Senator, is that it will set a precedent of moving water out of the Central Valley project area.

My only answer to their concern is that when the Central Valley project was originated back in 1937, almost 50 years ago, it was stated in the authorizing legislation that one of the fundamental purposes of the Central Valley project, along with distributing water to the users in the Central Valley area, was "to assist in reclamation of arid and semi-arid lands and lands of Indian reservations."

I don't believe it is a precedent to simply fulfill one of the fundamental purposes of the authorizing legislation. Not one drop of water in that 50 years has gone to an Indian reservation, but the fact that now there would be water going to the Indian reservations simply fulfills one of the fundamental purposes of the Central Valley project. So, that is the only concern we have heard. We feel that can be resolved, and I don't believe there will be any impact to any of the water users throughout the State of California.

Senator MELCHER. This hearing we are having today is a joint hearing between the Select Committee on Indian Affairs and the Senate Energy and Natural Resources Committee. I am a member of both committees.

I note that there hasn't been a House hearing, has there?

Mr. PACKARD. No; we hope to have hearings scheduled in the House subcommittee the first part of September.

Senator MELCHER. How many of the California delegation are cosponsoring this legislation?

Mr. PACKARD. Out of the 45 Members of the California delegation, 35 are now cosponsors.

Senator MELCHER. That is more than two-thirds, isn't it?

Mr. PACKARD. That is a pretty healthy number. I don't believe we have had that kind of unanimity of thought in California for some time.

Senator MELCHER. Well, congratulations.

Mr. PACKARD. You can congratulate me after we have the bill passed into law. That is when we will accept congratulations.

Senator MELCHER. As a former House Member, I well understand how difficult it is to put 35 out of 45 Members of the California delegation together.

Mr. PACKARD. I think that resolving an Indian water dispute that has been through the courts and will continue through the courts for some time is a high priority with most Members of Congress and, certainly, most California Members of Congress. So, we hope that this will solve a long-term problem.

Senator MELCHER. Thank you very much, Ron. We will work with you and do our darndest to pass the bill in September.

Senator MELCHER. Mr. Romney.

STATEMENT OF CLYDE ROMNEY, SAN DIEGO, CA

Mr. ROMNEY. Thank you, Mr. Chairman.

My name is Clyde Romney. I am a resident of Escondido, CA at the present time and a consultant to the Vista Irrigation District and the San Luis Rey Indian Water Authority. In addition, I had the privilege of serving as Congressman Packard's administrative assistant here in Washington, DC from the years 1983–85. It was in that capacity that he appointed me to serve as the chairman of the San Luis Rey Indian Water Settlement Task Force which is an ad hoc committee set up for the purpose of negotiating a resolution to this dispute.

I greatly appreciate the opportunity to appear before this committee today and testify in support of the bill S. 2676. I think that thanks and recognition are due to Senators Wilson and Cranston for introducing the bill. I particularly would like to thank Congressman Packard for the leadership role which he has taken for, truly, without his help, we would not be here today.

I would join with him in thanking the leaders of the Federal agencies that have jurisdiction over the different aspects of this bill and would like to point out the high level of cooperation throughout the entire process we have enjoyed from local leaders and especially the leaders of our Indian bands in northern San Diego County.

I have been asked by the parties to the litigation to act as sort of spokesman for an overview of the problem to make the committee understand the area that we are talking abut and some of the high points of the settlement which are embodied in S. 2676.

We have here a map, and I am going to ask Mr. Don Lincoln to assist me in pointing out some of the principal features of the area that are under discussion here this morning.

In general, the area that we are speaking about is north San Diego County. As you can see by the attachment which appears as a color map at the last page of my formal statement which includes a detailed explanation of the bill, this area, of course, is in the southwestern portion of the State of California. The area that we are talking about is roughly 20 to 30 miles north of San Diego Bay and the center of the city of San Diego.

Let me point out a couple of the principal features for you.

Marked in yellow at the bottom of the map are the cities of Escondido and Vista which constitute the principal service areas of Escondido Mutual Water Co. and the Vista Irrigation District. Also marked in yellow in the right-hand corner up here is the Warner Ranch which is a very extensive tract of land, some 43,000 acres which is a plentiful well field. This well field is pumped and extracts water which accumulates in Lake Henshaw, the largest reservoir in San Diego County.

Pointing out a few of the features that we are talking about in the dispute, central to it, of course, is the San Luis Rey River which is the line that connects Lake Henshaw, goes all the way through the upper regions, passing the Indian reservations which are marked out in the pink color, and on through to the Pacific Ocean and the city of Oceanside.

The Indian reservations are, in fact, a series of noncontiguous reservation leads occupied by five or more bands of the California Mission Indians. Representatives of those bands are here today and will be making their presentations to you.

The San Luis Rey River traverses several of those bands' lands but not all.

Many years ago, through a series of contracts with the predecessors in interest of the two local water-use agencies, arrangements were made and contracts were entered into which led to the construction of the Escondido Canal which has the intake point on the San Luis Rey River and diverts a certain portion of the flow of the water into a reservoir which we know as Lake Wohlford. It is stored and then filtered and transmitted on to the water use agencies.

Thank you, Mr. Lincoln.

The litigation which is the subject of this matter began in 1969 and proceeded before FERC and the U.S. District Court to the Southern District of California. When it was evident it would be in litigation for another decade or so, the parties, through an exercise of considerable wisdom, approached Congressman Packard and asked him to mount a serious effort to bring the parties together with each other and with the Federal Government to effect a settlement.

That took place in the summer of 1984 and led to the formation of the ad hoc task force that I mentioned previously.

From this time until June 1985, a series of intensive negotiations took place, starting here in Washington in December 1984 and culminating with an agreement which led to a formal statement of agreement of principles upon which the settlement would be based.

The essence of the settlement, stated in its most simple terms, is twofold, first of all, the equal division of local water and an equitable division of costs associated with its development and distribution among the parties, that is to say, resolution of the dispute as to the waters on the San Luis Rey River.

The second portion provided for the purchase by the Indians and delivery to their reservations of a relatively small amount of Central Valley project water already developed by the Federal Government. This was an uncontracted for resource which awaits passage of the coordinated operating agreement which has been under consideration in this Congress. Further extensive testimony is available for the committee from Mr. John Teerink later in our presentation this morning.

I would offer for the record, Mr. Chairman, the formal and detailed statement of the bill, its analysis, and the factual background at this time as well.

[Prepared statement of Mr. Romney appears in the appendix.]

Senator MELCHER. Thank you very much, Mr. Romney. We will have to pass on to the next panels. We are very limited on time today, which I think you can understand.

Mr. ROMNEY. Certainly. Thank you very much, Mr. Chairman.

Senator MELCHER. We would like to conclude this so we can have everything in order. Thank you both very much for your work on this.

Our next witness will be Assistant Secretary for Indian Affairs, Ross Swimmer.

STATEMENT OF ROSS SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. SWIMMER. Thank you, Mr. Chairman.

It is a pleasure to be here on behalf of this piece of legislation. We do have a prepared statement which I would submit for the record, and I would make a couple of comments on it and be happy to answer questions.

Our position on this bill is that we are very enthusiastic about it. We believe that it does provide a way out for these lengthy years of litigation and that it is certainly a good method of settling Indian water claims and does provide some precedent setting values to us in other areas of the country as far as the kinds of things that can be included and looked at, all the way from cost sharing to having the Indian interests participate.

In the statement, there are several concerns addressed that don't appear directly in the legislation. We recognize that there are other obstacles that must be worked out within the State of California between the water users out there, and we don't want to appear as a Federal interest that is going to interfere in what the State of California is going to be doing with its water.

However, we do also stress to the committee that, as was mentioned earlier, we are talking principally about an Indian water rights settlement which the Central Valley project was premised on when it was originally built, and we believe that our support of this legislation does not or should not raise the fear of anyone that we are going to have Federal interests of some kind come in here and determine what happens in California on its water.

However, we regard the Indian interests as our being their trustees, and this is an interest that must be protected.

As our statement points out, we say there are concerns that the settlement be subject to the implementation of the coordinated operating agreement which is yet to be developed. We recognize, again, that this is the option of Congress in how they are going to pass on this legislation, but we are a little concerned that we would like to see the settlement go forward if possible, recognizing, however, that those exigencies do exist, and we want to be on record that our concerns are there but we also recognize the need to get a settlement of some kind to end this litigation.

As far as the Colorado River water, I just managed to give Senator Wilson his letter. I would like to address that issue.

He asked in his letter two questions: One, without modifying existing Colorado River water entitlements, is there 22,700 acre-feet of Colorado River water available on a firm basis at the Colorado River Aqueduct intake to meet the needs of the proposed San Luis Rey River Indian water rights settlement.

Our answer to that is no. In fact, the water of the Colorado River was allocated between the upper and lower basin States by the Colorado River compact in 1922. We go on to explain some additional problems as far as the possible surplus water that happens there and how that has been allocated by contract.

I would like to submit the answers to these questions of Senator Wilson for the record also.

Senator MELCHER. That will be made part of the record.

Mr. SWIMMER. I would point out that, in addition to the benefits of settling the litigation that has been going on, there are no new capital construction costs that have to be financed. Indian and non-Indian water supplies will be conveyed by making use of existing water delivery systems, the overall settlement provides a substantial benefit to the reservation economies of these bands relative to the costs associated with the settlement, the bands will have water for their reservations and marketing authority to put the water to work for capital and economic developments on the reservations, and the settlement does provide substantial cost sharing by the non-Federal parties.

I appreciate the opportunity to appear today and would be happy to answer any questions that the Senator might have.

[Prepared statement of Mr. Swimmer with letter to Senator Wilson appears in the appendix.]

Senator MELCHER. Mr. Swimmer, was the 6-cubic-feet-per-second agreed to by the bands or was that just for one band?

Mr. SWIMMER. Was it agreed to by all bands?

Senator MELCHER. In 1914, the Government entered into a water rights contract with the Escondido Mutual Water Co. on behalf of the bands relating to rights of way, purchase of power, and establishing the right of the Rincon band to the first 6 cubic feet. Was that agreed to by all the bands?

Mr. SWIMMER. I don't have the answer to that question.

Senator MELCHER. Could you obtain that for us?

Mr. SWIMMER. Yes.

[Material to be supplied appears in Mr. Engstrand's statement.]

Senator MELCHER. Were rights of war or easements effectuated with all of the bands?

Mr. SWIMMER. I believe that all of the bands—I think I can say unequivocally that all of the bands are in agreement with the principles of what is being proposed, but I would defer to them on the specific questions.

Senator MELCHER. I guess rights of way were not granted to all the bands but to several of the bands, the Pauma, Pala, the Rincon, the San Pasqual. The bands have all apparently granted easements and rights of way for the canal. Is that not true? Perhaps not all of them, perhaps not the Pala and the Pauma, but several bands have granted easements or rights of way, have they not?

Mr. SWIMMER. I believe so.

Senator MELCHER. I wonder what 6-cubic-feet-per-second translates into in acre-feet. Can you advise me?

Mr. SWIMMER. Approximately 4,000 acre-feet per year.

Senator MELCHER. Is it your position, Mr. Swimmer, that the bill is adequate for protecting the rights of the bands?

Mr. SWIMMER. We believe that the bill is adequate and that it does protect the rights of the bands and does provide the necessary instrument to settle this water rights claim.

Senator MELCHER. Thank you very much.

Our next group will be the Honorable Jim Rady, mayor of the city of Escondido; Ray Betraun, president of Vista Irrigation District; Tom Wilson, chief engineer and general manager of Vista Irrigation District; Paul Engstrand, counsel to the city of Escondido; and John Teerink, construction engineer and consultant to the city of Escondido and the Vista Irrigation District.

STATEMENT OF HON. JIM RADY, MAYOR, CITY OF ESCONDIDO

Mr. RADY. Mr. Chairman, my name is Jim Rady. I am the mayor of the city of Escondido. We have prepared testimony, and I ask that it be submitted for the record rather than having me read it. I would like to make a few brief comments and then——

Senator MELCHER. All of the prepared testimony will be made part of the record. Please proceed.

Mr. RADY. Thank you, sir.

One good definition of a good deal is one where all parties leave the table equally dissatisfied. I think that definition fits this instant case. None of the parties got everything they wanted, but in light of the settlement of a law suit which has been a true burden to the city of Escondido, we support wholeheartedly S. 1676.

We are a Sun Belt city experiencing rapid growth, and it has been very difficult for us to do any meaningful planning with the burden of the law suit which prevents us from integrating and merging three separate water distribution systems. This works against the basic health and safety of the people in our community over such mundane things as fire flow and adequate provision of water.

The settlement of the law suit will allow us to merge the three water distribution systems and provide, on a cost effective basis, the infrastructure and the planning that is needed in a rapidly growing city.

I would like to publicly thank the Department of the Interior for the tremendous help that they have given us. Mr. Swimmer and Joe Membrino have been really important to the culmination of this settlement.

I would be happy to answer any questions.

Senator MELCHER. Thank you. Let's hear from the rest of the panel first. Please proceed.

[Prepared statement of Mayor Rady appears in the appendix.]

STATEMENT OF RAY BETRAUN, PRESIDENT, VISTA IRRIGATION DISTRICT, VISTA, CA

Mr. BETRAUN. Mr. Chairman, I am Ray Betraun, president of the Vista Irrigation District. We are sole owners of Lake Henshaw Dam and 43,000 acres of land which we bought back in 1946 for $4.7 million. For 40 years, we have been paying on his bond issue and have finally paid it off this year.

We have also invested $0.75 million on our present well field and need to spend another $0.5 million to refurbish them. In 1980, we spent $8 million on reinforcing the dam which cost us $700,000 per year for 25 years on another bond issue.

As you see, we have great interest in this issue before us today.

On behalf of the Vista Irrigation District, I urge you to support S. 2676.

I thank you.

Senator MELCHER. Thank you.

Who is next?

[Prepared statement of Mr. Betraun appears in the appendix.]

STATEMENT OF TOM WILSON, CHIEF ENGINEER AND GENERAL MANAGER, VISTA IRRIGATION DISTRICT, VISTA, CA

Mr. WILSON. Mr. Chairman, thank you for the opportunity to testify. My testimony will focus on two points, namely, the benefits of the settlement to the Indians afforded through the use of our local facilities and, second, the dollar value of our local contribution.

To answer your question as to what does 6 cubic feet per second mean to the Indians, historically, that has translated into about 2,500 acre-feet of water per year, not 4,000. The reason is that 4,000 is approximately correct if the 6 cubic feet per second flows year around, but in southern California, very few rivers flow year round.

Under the terms of the settlement, by splitting the water 50/50 with the Indians, the amount of local water that they will receive will increase to 9,000 acre-feet per year. That is an increase of 260 percent.

A major benefit to the Indians will be seasonal storage in Lake Henshaw which is above all of the reservations. That will provide a year round water supply to the Indians rather than the intermittent flows that occur only in the wintertime.

A major benefit to the Indians is the use of the Escondido Canal to transport water to lands that are high in elevation without the use of extensive pumping. Lake Wohlford, even though down stream of the Indian reservations, also provides storage for the Indians' water that originates below Henshaw Dam and above the intake to the Escondido canal. That will be effected by an exchange agreement with the Indian whereby the amount of their water stored in Lake Wohlford will be supplied from our water stored in Lake Henshaw.

In my view, one of the most important benefits that accrue to the Indians is our guarantee of 7,000 acre-feet of water per year. No one in southern California has a guarantee of water. This is done primarily because of our willingness to commit our Warner Ranch ground water basin.

If Henshaw Dam and reservoir are operated on a firm yield basis—and that is the way it would have to be operated for the Indians because they do not have an alternate supply of water—Henshaw Dam would only produce about 3,500 acre-feet of water per year. But with the ground water basin thrown in, we can guarantee to the Indians a minimum of 7,000 acre-feet per year. This doubles the yield to the Indians.

Last, the use of the local facilities and the use of local water under our concepts involved in this settlement provide an excellent cash-flow to the Indians. This cash-flow can be used for the construction of their infrastructure on their reservations so that they can put that water to beneficial use.

Last, from a water management point of view, it puts the water to the highest economic beneficial use. If they can make more money—have a greater rate of return—by using the water on the Indian reservations, that is the option that they would pursue. On the other hand, if they can't generate that type of revenue by using water on the reservations, then they would sell to us and we are obligated to purchase that water at 90 percent of our costs for imported water. That generates the cash-flow for the Indians.

As far as the valuation of our local contribution, that was presented to the Office of Management and Budget and is attached in tabular form to my written testimony.

Basically, there were two methods of valuation. One was the operation and maintenance and replacement cost basis for our contribution to the settlement. The second method of valuation was the rate of return that the Indians would receive because they would use the water.

Under the first method, Vista and Escondido agree to operate, maintain, and, if necessary, replace Henshaw Dam, Wohlford Dam, and the Escondido Canal. Those three facilities alone, if constructed today, would cost over $37 million.

Although we split the ground water production and the energy costs to produce that groundwater 50/50 with the Indians, Escondido and Vista have agreed to pay 60 percent, not 50 percent, of the operation, maintenance, and replacement costs for all the wells on the Warner Ranch. Thus, we are picking up an additional 20 percent of the Indians' costs.

This contribution, based upon the operation, maintenance, and replacement cost basis, is approximately $3.2 million per year.

As far as the value of the water to the Indians, experts have determined what lands could use water and what the payback capacity would be for the use of that water, resulting in about 3,900 acre-feet probably being used on the reservations and approximately 5,100 acre-feet being sold back to Vista and Escondido. That is the method of putting the water to the highest and best economic use.

That results in an annual return to the Indians of about $2.4 million. Thus, the value of our local contribution to the Indians in terms of the settlement ranges from roughly $2.5 million to $3 million per year.

Thank you, Mr. Chairman, for the opportunity to testify. We urge your support of this bill.

Senator MELCHER. Mr. Engstrand.

[Prepared statement of Mr. Wilson appears in the appendix.]

STATEMENT OF PAUL ENGSTRAND, GENERAL COUNSEL TO THE CITY OF ESCONDIDO AND THE ESCONDIDO MUTUAL WATER CO., SAN DIEGO, CA

Mr. ENGSTRAND. Mr. Chairman, I have been chief trial counsel for the Escondido interests for the last 17 years. Contrary to some popular beliefs, attorneys don't like to see litigation end, but there seems to be plenty of litigation for us in other areas.

I just want you to know that I have appeared in the trial courts of the State of California. I have appeared in the appellate courts of the State of California. I have appeared in the Federal district court, the Ninth Circuit Court of Appeals many times, and the Supreme Court of the United States. I have appeared before the Federal Power Commission and FERC and before the Department of Interior and the Department of Justice and almost an unending experience for me that I hope will soon be ended.

In my prepared testimony, I give the genesis of the rights of Escondido which start in 1891 with water filings and discuss this litigation at some length. Of course, you don't want to hear about that today.

I do want to answer the question you raised with Mr. Swimmer about the rights of way. Referring to the map, the first right-of-way was secured in 1894 when the intake was built on the La Jolla Reservation. That was a contract between the La Jolla Indians and the Escondido interests.

The next right-of-way was issued in 1908 which was a permit issued by the Secretary of Interior across the La Jolla Reservation, the Rincon Reservation, and the San Pasqual Reservation down to Lake Wohlford for the Escondido Canal.

The next right-of-way was issued in 1914 which again was across the Rincon and San Pasqual Reservations for powerlines for the construction and linking of the Bear Valley and the Rincon powerplants.

The next right-of-way that the Escondido interests secured was the Federal Power Commission license of 1924 which licensed all of the project facilities from the intake through Lake Wohlford for the facilities that were constructed on those three Indian reservations.

No rights of way have been issued in connection with Pala or Pauma because no facilities affect their rights. They are downstream from the project facilities.

If you have any other questions, I would be happy to answer them.

Thank you very much.

[Prepared statement of Mr. Engstrand appears in the appendix.]

Senator **Melcher**. Well, we are going to attempt here during the next month to keep you out of court by getting the bill passed.

Mr. **Engstrand**. My clients will really appreciate that and so will I.

Senator **Melcher**. If you walk that distance down the river and down the canal from the dam to Escondido, how far is it?

Mr. **Engstrand**. About 15 miles. It is very precipitous, and you can't walk it

Senator **Melcher**. And what are the crops produced on Vista Irrigation Project?

Mr. **Engstrand**. The crops that are produced in Escondido pretty much are people these days.

Senator **Melcher**. I understand that.

Mr. **Engstrand**. Citrus crops, avocado.

Senator **Melcher**. Citrus and avocado?

Mr. **Engstrand**. Right.

Mr. **Rady**. All of which need a continuous supply of water.

Senator **Melcher**. Yes; and that is year around, is it not?

Mr. **Engstrand**. Yes.

Senator **Melcher**. Mr. Wilson, is the Vista Irrigation District all on the ranch or does it stretch along here?

Mr. **Wilson**. We own the 43,000 acre Warner ranch.

Senator **Melcher**. So all the Vista Irrigation District is right there on the ranch.

Mr. **Wilson**. No; we have a service area that encompasses all the city of Vista as well as parts of other cities and unincorporated areas. Our service area is about 20,000 acres. We serve a population of about 60,000 people.

Senator **Melcher**. I guess I am thinking of the actual conversion of the water for irrigation purposes for the purposes of producing crops.

Mr. **Wilson**. Only about 20 percent of our water is actually used for irrigation purposes. We are very similar to a city water department. All of our water is filtered. We don't operate open ditches.

Mr. **Engstrand**. Mr. Chairman, there is one other member of our panel, John Teerink.

Senator **Melcher**. Yes, Mr. Teerink.

STATEMENT OF JOHN TEERINK, CONSULTING ENGINEER AND CONSULTANT TO THE CITY OF ESCONDIDO AND VISTA IRRIGATION DISTRICT, SACRAMENTO, CA

Mr. **Teerink**. I am John Teerink, consulting engineer, consultant to Escondido and the Vista Irrigation District. The purpose of my testimony today is to speak to the availability of water and power from the Central Valley project and the means of conveyance of that water to the San Luis Rey area.

With your permission, I would like to use this map of the State of California which shows the major water facilities in the State. The Central Valley project is a Federal project which operates several reservoirs in the Sacramento and San Joaquin valleys and a number of conveyance facilities and power facilities.

The waters developed by the Central Valley project are used in the Central Valley and in the coastal area of California. Approximately 8.5 million acre-feet of water is now under long-term contract. About 8.2 million feet of that is within the Central Valley itself, and about 300,000 acre-feet is in contracts out of the basin into the counties of Alameda, Santa Clara, San Benito, and Santa Cruz.

There is presently developed excess water to the contracts in the amount of about 1 million acre-feet which now flows out of the Sacramento and San Joaquin basins through San Francisco Bay into the ocean. It is from this uncontracted yield of the Central Valley project that the 22,700 acre-feet would come.

Concern has been raised that there are demands for water in the Central Valley of California and that these demands exceed the million acre-feet. California does have some water deficiencies. The State department of water resources in its recent publication on the California water plan indicates that about 1.8 million acre-feet is the suplemental demand in California. Much of this demand is in areas, however, that are not easily served by existing conveyance facilities.

It is estimated that a number of canals or other conduits would have to be constructed to bring the surplus water to a number those areas, and this cost is proably on the order of $1 to $2 billion. We believe that realistically it will be many years before we are able to bring this water to the areas of deficiency in California.

Conveyance facilities do exist in the State water project and in the metropolitan water district and the San Diego County Water Authority to bring the water from the Central Valley project. Water would be diverted in the delta through the State facility, which is the California aqueduct as shown in blue on this map, into southern California and into the system of the metropolitan water district and through exchanges or direct delivery into the adqueducts of the San Diego County Water Authority for delivery to the San Luis Rey River area.

The power used to pump the water would come from power in the Central Valley project. That power now is first used for what we call project use power. It is used to pump water for the contracts the Federal Government has with Central Valley project water users. Surplus power in excess of that is sold commercially to preference customers, public entities. Power that is surplus to commercial customers goes into an energy account, and is sold to Pacific Gas & Electric Co.

The proposal is to take the power from this energy account that is surplus and now being sold to the Pacific Gas & and Electric Co. Approximately 72.6 million kilowatthours per year will be required to pump the water over the Tehachapi Mountains.

At the present time, the Central Valley project power being marketed through the Western Area Power Administration amounts to about 10 billion kilowatthours per year. The most recent annual report, the 1984 report, shows about 1.2 billion kilowatthours being used for Project use purposes, that is, pumping Central Valley project water to water customers. Approximately 6.9 billion-kilowatthours was sold to commercial power customers, and approximately 1.4 billion kilowatthours went into the energy account and was sold to Pacific Gas & Electric Co.

It is our conclusion that the conveyance facilities are in place to deliver the 22,700 acre-feet of water. Discussions have been held with the State of California and with the metropolitan water district on wheeling water through those facilities. Such an exchange now takes place in the Central Valley of California known as the Cross Valley Exchange where Central Valley project water is brought through the California Aqueduct and delivered to Federal contractors on the east side of the San Joaquin Valley where there is no Federal facility to serve them. The concept for the Cross Valley exchange is similar to the one that is being proposed in S. 2676.

That concludes my statement, Mr. Chairman.

[Prepared statement of Mr. Teerink appears in the appendix.]

Senator MELCHER. Thank you, Mr. Teerink.

Mayor Rady, what is the population of Escondido today?

Mr. RADY. 80,000 people, sir. In the Escondido Valley, including the unincorporated areas, I would say it is about 110,000 people.

Senator MELCHER. So, 80 percent of the water is not used for irrigation. About how much of it does Escondido get?

Mr. RADY. Correct.

Senator MELCHER. It gets all of the rest of it, or does some go to——

Mr. ENGSTRAND. Of the local water?

Senator MELCHER. No; of the water that is stored and pumped, how much does Escondido get?

Mr. ENGSTRAND. Roughly, it goes 50 percent to Escondido and 50 percent to Vista. Of the local water we are entitled to, we share just about 50/50.

Mr. ENGSTRAND. That is today. After the bill passes, then the Indians will get half and Vista and Escondido will split the half. So, we are diminishing our percentage from 50 percent to 25 percent.

Senator MELCHER. And that is agreeable?

Mr. RADY. It is needed to make the deal work.

Senator MELCHER. The deal is what is agreeable.

Mr. RADY. Yes, sir.

Senator MELCHER. You get Mr. Engstrand out of court. Is that right?

Mr. RADY. That is a component of our decision.

Senator MELCHER. All right. Thank you all very much. We appreciate this.

Our next panel will be Henry Rodriguez, chairman of the San Luis Rey Indian Water Authority, Pauma Valley; Patricia Nelson, treasurer of San Luis Rey Indian Water Authority, Pauma Valley; Robert Pelcyger, and Robert Holden.

Mr. Rodriguez, please proceed.

STATEMENT OF HENRY RODRIGUEZ, CHAIRMAN, SAN LUIS REY INDIAN WATER AUTHORITY, PAUMA VALLEY, CA

Mr. RODRIGUEZ. Mr. Chairman, this is a most memorable occasion. I submit the following statement on behalf of and as chairman of the San Luis Rey Indian Water Authority consisting of Pala, represented by Patricia Nelson; Chris Deavers from Pauma; myself from La Jolla; Mr. Mazzetti from Rincon; and Mary Matteson from the San Pasqual Indian Reservation.

After over 100 years of controversial water disputes and in the last 20 years of intense costly litigation, the principal parties have agreed to a negotiated settlement. Extreme efforts have been taken by both parties to involve all other governmental agencies on various levels that would be affected by the negotiated settlement. This settlement will benefit the north San Diego County communities and the five reservations.

Indian reservation communities represent the least developed section of the economy and, as a consequence, may have the most potential for long-range development and growth. This development is possible only if the same opportunities that are made available to the surrounding areas are also made available to these reservation communities.

There are undeveloped and underutilized natural resources on almost every reservation. Agriculture land has not been farmed, recreational space has not been developed, and, in some cases, minerals or ores have not been mined. There is an underemployed labor force which could make a significant contribution to local reservation economies if they were given the proper training and skills and opportunities.

These water disputes are evidenced by undeveloped reservation lands as compared to the surrounding lush productive citrus groves, truck farming, horticulture, hot houses, and expensive homes. Denial of water resources and relative factors has caused the reservation community to live a drab existence on undeveloped lands due to the lack of potential water resources for development.

These aggravated conditions have had a most serious and adverse emotional effect on our children and people as well as others in the community. They are constantly and courageously defending the cause for living on undeveloped lands to the surrounding community, certainly through no fault of their own.

Under these situations, attitudes and values evolve into bitterness on both sides. In order to maintain a balanced growth, the five reservation communities have established goals for advancement of their human, physical, and economic development resources through a tribally approved overall economic development planning program. However, under such continuous adverse conditions, the tribes still maintain a highly cooperative spirit and attitude toward the attainment of self-sufficiency by development of resources, thereby obtaining the needed economic base.

These efforts to cooperate are substantiated by the many hours spent in meetings with the tribe attorneys, governmental representatives, the various principals concerned, and others associated with litigation, negotiations, and numerous attempts at a negotiated settlement.

We realize that social growth must parallel economic growth. Settlement provides the best if not the only viable solution. The advantages of a negotiated settlement include:

The ability to tailor solutions to the unique circumstances of each individual situation and to fulfill the rights of and obligations to Indian tribes in the manner that is least disruptive to their non-Indian neighbors;

The ability to promote conservation and sound water management practices; and

The ability to establish the basis for cooperative partnerships between Indian and non-Indian communities to replace the adversarial and often hostile relationships that currently exist.

In conclusion, the litigation which spawned S. 2676 has been underway for 17 years now, and the Federal Government and the bands still have nothing to show for all their efforts. If this bill is passed and the proposed settlement implemented, five Indian communities will have the means to become economically self-sufficient without further need for costly Federal Indian services and programs. Instead of being a burden and a drain on the Federal Government as well as the local taxpayers, the bands and their members will become positive contributors to the local, regional, and national economies.

The five bands support the passage of S. 2676. We ask for your most favorable consideration.

In addition, I would like to add that a few years ago we met in these same buildings with many of the governmental agencies. At that time, I asked all the principals in these agencies on the various levels to please assist us in solving this mutual problem. I must say to this day that all of these agencies have respectively and sincerely contributed their efforts to the point where we are at today.

I wish to thank them for their concerted efforts and, Mr. Chairman, I ask that you act favorably on this for the benefit of all concerned.

Thank you.

[Prepared statement of Mr. Rodriguez appears in the appendix.]

Senator MELCHER. Thank you.

Patricia Nelson.

STATEMENT OF PATRICIA NELSON, TREASURER, SAN LUIS REY INDIAN WATER AUTHORITY, PAUMA VALLEY, CA

Ms. NELSON. I hope you can bear with me. I am a little nervous, and I am a little nervous for a lot of reasons. This has been going on for 20 years, and of the two people that they sent to come and testify before this body, I happen to be one of them.

My name is Patricia Nelson, and I am a Cupeno and Luiseno Indian from two of the reservations involved in the San Luis Rey Litigation, that is, Pala and La Jolla. I came here today with a tremendous sense of urgency, urgency brought on by the knowledge that back home on five reservations, there are five small bands of Indian people that are depending on us to tell you the truth about us and to tell it in such a way that you listen, that you understand, and that you care.

I also came here today filled with a failing sense of dependency, dependency because, once again, it is the Indian that stands before this honorable body asking, as we have so many times in the past, for still another chance, a chance to tend to the basic needs of our people. We come once again asking for what we believe is our inherent and our vested right, the right to coexist as Indian people, the right to coexist as the sovereign independent nation of Indian people that we perceive ourselves to be.

We are mindful and respectful of your positions in Government. So, for this reason, we must stand humble before you knowing that the decisions and the conclusions you reach today have the ability to impact and change, for better or worse, the lives of five small bands in southern California for now and for ever after.

In 1969, we initiated the suit which brings us to this forum today. It is our hope to explain and clarify our purpose so that you can have before you the relevent facts to help you make your decisions.

I think it is very important that you know that there are three tribes of Indians that are represented on the five reservations involved in the San Luis Rey litigation. They are the Cupeno, the Luiseno, and the Deigueno.

The unity of purpose in our effort to resolve this longstanding dispute with Escondido and Vista is best demonstrated by the spirit of cooperation that we engaged in this pursuit. As dissimilar the five bands are in language, customs, cultures, and traditions, so are we kindred in our belief and commitment to the survival of our people. That is how it came to be that these three different tribes on five reservations joined together to engage in the most significant battle of our lifetime, the struggle over the rights to the water of the San Luis Rey River, water that we honestly believed could never belong to anyone.

The Diegueno Cupero and Luiseno people we represent today have suffered in ways that we hope to make you understand. It is out intention to increase your comprehension of what life we have and what life we want. It is our goal to help you see, as we see, that the San Luis Rey River was a very special gift to us, an offering from another power which gave us physical and spiritual strength, purpose and life to our tribes and to our people.

In this there was beauty, and it is the same beauty that we are looking for today. It is the beauty of success, opportunity, creativity, and the final knowledge that in 1986, it is the very same river we once depended upon for survival that will now give us new life.

It would be an oversimplification to state that the very existence of the river promoted our tribes. While it did indeed give us some sense of security, albeit false, it did nothing to lessen the sense of anguish and confusion of having to restructure our lives from that of a nomadic wondering group to those confined by geographical barriers.

As five Indian bands attempting to reconcile and adapt to a reservation system, adapt to a situation not of our making, the effort has been all ours, then as now, and the effort has indeed taken its toll.

In 1986, our five reservations—the Pala, Pauma, Rincon, La Jolla, and San Pasqual reservations—are located in the most beautiful and bountiful part of San Diego County. We are situated amid acres and acres of avocado and citrus orchards. We are surrounded by luxury homes, golf course, country clubs, and ranches. Yet, each of the five reservations is quickly and easily identifiable by the absence of growth and the dry, barren lands.

A closer look, that few take, would reveal a population plagued by unemployment, constrained by the lack of education, with few successes or achievements either individually or as a band. But within these same people, my people, our people, you would undoubtedly notice a sense of spirit and determination, tenacity of the same type born by the early founders of this great Nation of ours.

It is this spirit, this sense of pride in ourselves, our resources, and our waters that rules our spirit and, in fact, perpetuates our race. We are survivors against all odds, survivors who are asking for your help today so that we might step forward and take control of our lives and our destiny.

I am a Cupeno and a Luiseno Indian. My people, the Cupeno people, with my great grandmother, Salvadora Valenzuela, and her two small children, Claudina and Katherine, among them were forcibly moved from our ancestral homes at Warner Hot Springs in 1903. Armed Federal troops supervised this move and members of the tribe were forced to leave behind horses, cattle, and other personal items because they were only allowed to take what they could carry in their arms.

When we got to Pala, each head of household was given a parcel of land to farm. In our situation, my great grandmother, being alone with children, was physically unable to meet this challenge. But she was a very resourceful woman, and she entered into a cooperative agreement with Mexican farmers in the area. They farmed the land, and my great grandmother received a percentage of the profits.

The San Luis Rey River was crucial to the success of that venture, and that is how my family and other members of my tribe survived.

The cooperative agreement of the type my great grandmother entered into is just a sampling of the many types of arrangements that were worked out in those days between our people and our Mexican and American neighbors. It is demonstrative of the types of collaborations, partnerships, and joint ventures that we, the Indians, have historically and willingly entered into so that other people might benefit from the natural resources provided through the grace of still another power.

The five bands specifically and Indian people generally have a tremendous respect for all life and for all peoples. It is and was this reverence for life that directed us to peacefully give up our lands, our resources, and our languages, and, often, our people so that the others could enjoy and prosper from the offerings of mother Earth. That, to me, is the crux of S. 2676.

So, now we come to you, another time, another power, asking that you share with use what we once shared with you so that we might have the chance to conclude an era of dissent and strife, take control of our lives, and give our people what they need to begin a new life.

What we ask is 22,700 acre-feet of Central Valley project water; 22,700 acre-feet of water, an amount less than that routinely lost through evaporation, waste, or spillage, an amount so insignificant that once we were told during the 2 years of working out the details of this agreement that this amount is not even measurable.

It is an insignificant amount of water, just as we, the five bands, are insignificant.

We have no delusions about ourselves. We know that our numbers are few and our voices faint. We understand fully that the benefits of ending the San Luis Rey River litigation is in the relief it will provide our non-Indian neighbors in Escondido and Vista. But that is OK.

Our neighbors in the Central Valley are worried. They are concerned and worried that if the five bands are allowed the one drop of water we ask that a precedent will be set and others in southern California will be trying to take water from the delta as well.

We understand their concern, and we understand precedents. It was our eastern brothers who very much set a precedent when they welcomed the pilgrims to this country and helped them farm and settle.

To deny us water is to deny us life. I must ask, is that the precedent the Central Valley's farmers wish the Congress to set?

We are not immigrants. We are not refugees. We are the first Americans. We are the original Americans. Yes, indeed, we do hope Congress will set a precedent by passing S. 2676, a precedent which demonstrates that Congress and the American people are willing to accept responsibility for previous errors in judgment, a precedent which shows respect for the American Indian and the many sacrifices that our people have made on behalf of our non-Indian neighbors.

We want to thank you very much for your concern and interest. I want to thank you for your time and the opportunity to make this statement. We appreciate your help, and we urge you to pass S. 2676 so that we can bring new life to our people.

Thank you.

[Prepared statement of Ms. Nelson appears in the appendix.]

Senator **MELCHER**. Thank you.

Mr. Pelcyger, please be very brief.

STATEMENT OF ROBERT S. PELCYGER, FREDERICKS & PELCYGER, BOULDER, CO

Mr. **PELCYGER**. Senator, I just want to add my voice in support of S. 2676. I think it provides a fair and equitable solution of a longstanding controversy.

I have also provided some additional materials to members of your staff that I ask be included in the record, including a very supportive editorial yesterday in the Los Angeles Times calling for the enactment of this legislation and a resolution from the Western States Water Council supporting the resolution of Indian water rights disputes through negotiated settlements. I have provided also a copy of the ordinance that establishes the San Luis Rey Indian Water Authority to your staff and ask that it all be included as part of the record.

Senator MELCHER. It will all be included, Mr. Pelcyger.

Mr. PELCYGER. Thank you, Senator.

I would just like to say one final thing. I think one of the principal virtues of this settlement agreement is that it provides not only water, but what we like to refer to as wet water, to these Indian reservations. Too often, I think, Indian water rights have been defined abstractly as rights to water, but they don't really have any meaning or benefit the Indian people because they can only be applied and used with the construction of very expensive systems which Congress has been all too reluctant to provide in the past.

One of the major benefits of this legislation will be that it will not only provide water but will put the water in a place and also provide a stream of income that will enable the Indians to make use of the water and better the lives of their people. In that respect, it is an achievement that is possible through the legislation and the settlement process that really couldn't be achieved through litigation.

So, we urge you to consider this legislation favorably and, hopefully, speedily.

Thank you, Senator.

[Prepared statement of Mr. Pelcyger appears in the appendix.]

Senator MELCHER. Thank you, Mr. Pelcyger.

Mr. Holden.

STATEMENT OF ROBERT HOLDEN, NATURAL RESOURCES ASSISTANT, NATIONAL CONGRESS OF AMERICAN INDIANS, WASHINGTON, DC

Mr. HOLDEN. Good morning, Mr. Chairman.

My name is Robert Holden. I work with natural resources issues for the National Congress of Americans Indians.

I would just like to say that the problems the current situation poses started many years ago, back when the Federal Government was spending enormous amounts of money putting together subsidies for benefits to non-Indian farmers in that area without consultation, without thinking of the tribes, without being aware of water rights in that area, paramount water rights, I might add.

There has been a lot of money, additionally, spent on litigation over the past 18 years with perhaps 15 or 20 years remaining before a court decision could be handed down. Water rights disputes, in general, are very complex, and they are very difficult to settle, but it seems like there has been a lot of time and effort put into this settlement. All parties seem to be satisfied, and I think it is incumbent upon this committee to act favorably on S. 2676.

I do apologize for putting H.R. 4468 on my statement. This is my baptism by fire for presenting testimony, and I guess between heart palpitations I managed to put the wrong bill number there.

I want to thank you for your time, and we urge you to consider favorably S. 2676, and I will offer my written statement for the record.

[Prepared statement of Mr. Holden appears in the appendix.]

Senator MELCHER. Thank you very much.

Mr. Rodriguez, you are speaking for all the five reservations which includes all the Mission bands?

Mr. RODRIGUEZ. No; just the five reservations—Pala, Pauma, La Jolla, Rincon, and San Pasqual—which are shown on that previous map.

Senator MELCHER. And they are all that are involved?

Mr. RODRIGUEZ. Yes; that is right.

Senator MELCHER. Was there a treaty with the Mission bands?

Mr. PELCYGER. Mr. Chairman, there were 18 treaties with virtually all of the tribes throughout California that were negotiated with the Federal Government at the time of the California gold rush in the early 1850's.

Senator MELCHER. Is it your position that some of these treaties were violated?

Mr. PELCYGER. Well, those treaties were never ratified. Consequently, the reservations in California are not treaty reservations. The reservations involved here were established originally by executive orders and pursuant to an act of Congress that was passed in 1891.

Senator MELCHER. Is it your position that the rights of the tribes were inadequately defended over the last 100 years?

Mr. PELCYGER. There is no question about it. My written statement goes into that in some detail and, or course, there are volumes of documents and briefs behind that.

This problem was created by the Federal Government. You asked a question before, Mr. Chairman, about the 6 cubic feet per second this is provided for in the 1914 agreement. That was just for Rincon. The rights of the other reservations were ignored.

The rights-of-way were obtained through a comedy of errors. There was only one agreement that was entered into with the Indian band itself even though Congress, when it enacted the 1891 statute, specifically provided a mechanism for obtaining rights-of-way by agreements with the Indian bands. That was only followed in one instance in the 1894 agreement with La Jolla. After that, the Secretary of the Interior granted rights-of-way, and the Federal Power Commission as well, without providing any consideration to the Indians.

Even that 1894 agreement provided for a right-of-way only across the one reservation, La Jolla, without any consideration at all for the La Jolla Band. That agreement provided that the La Jolla Band would have the right to tap the canal to receive water. That was the only conceivable consideration, but the Interior Department knew at the time that there were no lands on the La Jolla Reservation that could be served from the canal because the irrigable La Jolla lands were at much higher elevations on the reservation.

So, it was a comedy of errors. In fact, there was an 1897 agreement with the Rincon Band which would have provided some real benefits to the Rincon Indians, but that agreement was never approved by the Interior Department, because, for good reason, it was deemed to be contrary to the band's best interests. Yet, 11 years later, in 1908, Interior granted the same right-of-way for nothing.

So, the problem here is really a classic one. On the one hand the Federal Government established the reservations, promising the water supply. The ink was hardly dry on the documents establishing the reservations when the water was given away to Escondido and Vista. Escondido and Vista have come in and spent a lot of money developing their supply, becoming dependent on it. Naturally they are reluctant to part with it.

So, it is a classic conflict that was really created by the Federal Government. We think it is therefore, appropriate for the Federal Government to help resolve it, and that is what S. 2676 would do.

Senator MELCHER. So, the bill cements some water rights for the bands plus the right to sell some water from the Central Valley to raise some cash?

Mr. PELCYGER. Yes; and to sell some local water as well to raise some cash which has to be used under the bill for the economic development of the reservations. It can not be distributed per capita.

Senator MELCHER. Mr. Holden, you are telling us, I guess, that the National Congress of American Indians approves the bill as the best way out.

Mr. HOLDEN. That is correct, sir. We certainly can't endorse negotiated settlement in all instances, but looking at this, I believe it does well. There is no doubt about that. The Indian people there are entitled to that. There is no doubt there has been a lot of animosity generated over this issue, but then there is no doubt also but that a lot of work has gone into this and non-Indians and Indian parties can get back together and put the time and money that they have been spending on litigation back into something positive.

So, the legislation looks very good from our point of view.

Senator MELCHER. Chairman Rodriguez, you are testifying on behalf of the five reservations that the bill is the best solution.

Mr. RODRIQUEZ. Yes; after 100 years of controversy, we feel it is the best solution for everyone concerned, not only the Indian, but the surrounding communities as well and the other factors that might lead toward economic development and being able to live in a manner that would be improved social and economic well being for everyone concerned.

Senator MELCHER. Thank you very much. Thanks to all of you.

Our next panel is Deborah Sliz, director of government relations, American Public Power Association; and Roger Fontes, planning director, Northern California Power Agency.

Deborah?

Ms. SLIZ. With your permission, Mr. Chairman, I would like to yield to Mr. Fontes.

Senator MELCHER. All right. Mr. Fontes?

STATEMENT OF ROGER FONTES, PLANNING DIRECTOR, NORTHERN CALIFORNIA POWER AGENCY, WASHINGTON, DC

Mr. FONTES. My name is Roger Fontes. I am the planning director for the Northern California Power Agency. I want to thank Senator Andrews for inviting me and Senator Melcher for sitting through the hearing and taking testimony today.

I am here today representing the Sacramento Municipal Utility District and the 12 municipal members of NCPA. Together, we buy 70 percent of the power sold by the Central Valley project. That means that we pay the bills out there in California, and I will get to that a little later in my testimony.

I have filed extensive written comments on the proposed legislation, and I understand they will be entered into the record. I won't read them here today but would like to just summarize some salient points from both my testimony and those of other witnesses.

In summary, certainly NCPA, SMUD, and its members have no quarrel with the Mission Indians or with the municipal governments of Escondido or Vista. As municipal governments ourselves, we understand quite clearly the difficulty in maintaining adequate water supply and water quality.

We do oppose S. 2676 in its present form. We have offered an amendment which we think improves the bill, but we still consider it a serious precedent. We also consider that the bill could be very costly to the U.S. Government.

What do we want? I guess we want an ironclad legislative guarantee that the use of power from the Central Valley project will not be taken away from our customers and from our citizens. We want an equal guarantee that no additional costs due to this legislation will be passed on to our customers now or in 2004 or 20015 or forever.

We also want to see one project rate for all power sold from the project. This is an issue that we have fought in the legislative arenas over the past 10 years and something that has just been recently established. We think it is important that the project only sell power at one rate.

One thing we are not looking for, which I understand may have led to some confusion with our amendment, is that we are not looking to override the allocation process of the Secretary of Energy and the prerogatives that he has under Federal reclamation law. For example, in 1994, some of our contracts expire with Western. We don't believe that our amendment would require that the Secretary of Energy, acting through the administrator of Western, renew those allocations in whole or in part.

We do believe that the amendment is necessary to protect the power customers to the degree that they do at any time have a contract with Western.

To summarize, I would like to read into the record just quickly that NCPA is composed of 11 cities, including Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Ukiah, and the Plumas-Sierra Rural Electric Cooperative. SMUD is the largest single preference power customer of the Central Valley project.

At the present time, SMUD obtains one-fourth of its electrical power supply from the CVP. NCPA cities, on the other hand, obtain full one-half of their electric supply from the CVP.

SMUD was created in 1923, but because of numerous legal obstacles, did not commence full operations until 1946. Today, SMUD serves an area of 890 square miles, has over 300,000 customers, and has a peak load in excess of 1,800 megawatts. Although it owns nuclear, hydro, geothermal, solar, and combustion turbine units, a significant portion of its power comes from the CVP. Indeed, SMUD was one of the CVP's earlier customers, and its original contract dates back to 1952.

Although NCPA was formed in 1968, many of its 11 cities and cooperatives were providing electric service in the 1800's. In fact, the city of Alameda is the oldest electric utility in the State of California.

Today, our member cities serve 250,000 customers, stretching as far south as Lompoc, which is near Santa Barbara, and up to the city of Redding in the north, which is very near the Oregon border. Like SMUD, NCPA also has extensive geothermal, hydro, and combustion turbine resources, but its member cities also depend on purchases from other utilities, the most important being the Central Valley project.

Our current experiences require us to insist that the assurances that we keep hearing today and in print that there will be no impact on us are unrealistic. We are and currently have been in a situation of power withdrawals. That means our power from the CVP is being reduced. In fact, in June of this year, five of our cities had their power from the CVP permanently withdrawn and reduced.

Also, power rate increases have been very prevalent in the CVP. Power costs have increaed to our customers 100 percent since 1980. Today, we pay a rate of about 40 mills per kilowatthour. The power to move the water to the Indians would be priced at 4 mills. So, just as a starting point, we pay approximately 10 times the project's current pumping rate, and we continue to see a potential for a large Federal subsidy.

The Assistant Secretary for Indian Affairs offered an amendment in his testimony which I saw today for the first time to make it absolutely clear the Indians will not pay more than 4 mills per kilowatthour for power to pump this water to southern California.

Finally, and I think perhaps more importantly and one of the reasons I am here today is that CVP power users under reclamation law have certain irrigation aid responsibility. That means any costs for irrigation aid not covered by the project are ultimately borne by the power customers.

Today, I am informed that the deferred debt on irrigation aid to our members is $118 million.

I would like to just close by commenting on the testimony filed by the administrator from Western Area Power Association, Bill Clagett. First of all, I understand page 3 of his testimony was not included, and I would reserve some right to ultimately read that page and maybe amend my testimony.

Mr. Clagett's basic testimony is that the problem of pumping water to the southern California area—which was never intended in the CVP—is a manageable one. I guess that is understandable since he is the senior administrator at Western.

He does, however, acknowledge in his testimony that the project is short of power without acknowledging anything about the current withdrawals. But he also believes that is manageable if—he cites a couple of instances—if the Northwest Intertie were put into full usage.

Our planning analysis takes a different approach, and I guess we are a little more skeptical than the administrator. We know, in fact, that the intertie cannot be scheduled by Western due to its own needs and their imports can be stopped by Pacific Gas & Electric Co. under their complicated contract.

Also, the administrator points out that the Central Valley project could run out of energy in the late 1900's but forgets to mention that any additional low water years—and we have had some substantial low water years in California—would critically impact the project's ability to produce power.

Again, in summation, we are very disappointed at the current situation that our members find themselves in, and that is to be in a deficit power situation having power withdrawn from them and having their power allocations reduced. This has not been mentioned and is not a factor in the proposal or the understanding of the legislation as we read it.

Thank you.

[Prepared statement of Mr. Fontes appears in the appendix.]

Senator MELCHER. Please proceed.

STATEMENT OF DEBORAH SLIZ, DIRECTOR, GOVERNMENT RELATIONS, AMERICAN PUBLIC POWER ASSOCIATION, WASHINGTON, DC

Ms. SLIZ. Mr. Chairman, my name is Deborah Sliz. I am here today to represent the American Public Power Association.

APPA is a Washington, DC based trade association that represents more than 1,750 nonprofit, consumer-owned utilities that are owned and operated by municipalities and other public bodies. In the State of California, APPA represents 40 member utilities, including 19 utilities that qualify as preference customers, which means that they are entitled to the first purchase of power generated at Federal facilities that is in excess of the project needs.

APPA has no position on the overall settlement contained in this legislation. We do recognize that in the Western States, conflicting water rights claims present very difficult and complex legal and political problems, and we applaud the efforts of all the parties to try to put together a settlement that can be solved through legislation rather than through continued litigation.

We do, however, oppose that section of the legislation before these committees today that authorizes the Secretary to use Central Valley project power to move water from the Sacramento Delta down to the Indian Water Authority. We object to this provision because we believe it will have an adverse impact on present and future preference customers, and we believe it will set a bad precedent for preference customers across the country that purchase power from the 127 Federal power projects.

Section 5 of this legislation designates delivery of water to meet the Secretary's obligations to the bands as a new project use for the CVP. As such, use of this power will get a higher priority than power allocated to preference customers. This will reduce the amount of power available for allocation to preference customers and force them to find more expensive replacement sources of energy.

APPA is opposed to any provisions of this settlement which would impose additional costs or burdens on people and entities that are not parties to the underlying litigation and that will not benefit from the settlement.

We recognize that the bill does attempt to protect existing contract holders. We agree with Sacramento and NCPA that those provisions need to be tightened to make sure that there are no reductions in power or additional costs imposed. However, even if those provisions are tightened, we must object to section 5 because there is no protection afforded for future preference customers or future contract holders.

As written, this bill may expose preference customers to increased power costs or reductions in power to meet the terms of a settlement to which they are not a party. There are more than 500 public power systems across the country and another additional 600 rural electric cooperatives that buy power as preference customers from the Federal Government that would be affected by this precedent.

Designation of new project uses such as the new project use contained in this legislation undermines the preference clause by reducing the amount of power available for allocation to qualified preference entities. It also threatens the possibility of increased costs, in this case, for the remaining Central Valley project power users.

Throughout the history of the reclamation program, water users and power customers have had a long and successful partnership. Power revenues are vitally needed to establish the economic feasibility of these multipurpose Federal projects. Power pays 100 percent of all the costs of installing the powerplant facilities plus interest and, in addition, goes another step further to help repay those costs associated with irrigation facilities that are beyond the ability of the irrigators to pay.

In the Western Area Power Administration service territory, power users are now obligated to pay $3 billion for the powerplant facilities and another $1 billion in irrigation assistance. In the Central Valley project alone, power users will repay their own costs of nearly $0.5 billion and are obligated to pay $196 million in irrigation assistance to repay the irrigation facilities.

This is a partnership under repayment terms that the power users have been very happy to agree to and are more than willing to repay, but we believe that it is unfair to ask them to pay additional costs relating to a settlement in which they are not involved.

[Prepared statement of Ms. Sliz appears in the appendix.]

Senator **Melcher**. Isn't it true that the argument the two of you have is with 35 House Members from California and the two Senators and Vista and Escondido and not with the bands?

Mr. **Fontes**. We certainly don't have an argument with the Bands and the districts. The Senators this morning mentioned——

Senator **Melcher**. You don't have any argument with the bands?

Mr. **Fontes**. No.

Senator **Melcher**. I don't think you do, but what about the districts?

Mr. **Fontes**. Well, we don't have a quarrel with them either. It is not our issue.

Senator **Melcher**. They are for the bill, aren't they?

Mr. **Fontes**. We are not for the bill, no.

Senator **Melcher**. Escondido is for the bill.

Mr. **Fontes**. Yes.

Senator MELCHER. Aren't they one of the districts?

Mr. FONTES. I guess, Senator, I am confused. These two cities are not some of our members and are not associated with our area of the State. Basically, this bill moves water across the Tehachapi Mountains which serve as a substantial barrier to water transfers.

Senator MELCHER. That is true, but basically the bill resolves the rights of the bands for water which brings you to Escondido, doesn't it?

Mr. FONTES. I just don't understand your question, sir. I am sorry.

Ms. SLIZ. Senator, if I could pick up, I think it is correct to say that we have no quarrel with the bands and we have no quarrel with trying to resolve this dispute with legislation. We would argue that whatever costs are involved in implementing that settlement should be borne by the parties to the dispute and to the litigation rather than by the power users.

Senator MELCHER. Well, Escondido and Vista, Mr. Fontes, are for the bill.

Mr. FONTES. Yes.

Senator MELCHER. But you don't have any problem with that? Do you understand why they are for the bill?

Mr. FONTES. Sure; it is very advantageous to them to maintain their current population. Air and water are fundamental to life support.

Senator MELCHER. Well, in order for them to maintain that water, they are going to have to resolve what amounts of water the bands have coming to them.

Mr. FONTES. From what I understand of the pending litigation, that is true. But every city faces a water availability problem. We are not offering to take CVP water and deliver it to the Indians in Oklahoma.

Senator MELCHER. The point made by Ms. Sliz is that you have no quarrel with anybody but you really don't want the funds taken out of the Central Valley. Do you share that view?

Mr. FONTES. Yes; very strongly.

Senator MELCHER. Then your argument is with the Federal Government, isn't it, because they just testified for the bill.

Mr. FONTES. Exactly. There is no funding mechanism in the bill. There is no authorization to pay for the spread between the cost of pumping and what the Indian tribes would pay to deliver the water.

Senator MELCHER. Well, I follow your argument all right. If you can convince the administration to fork over the cash, I am all for you.

Mr. FONTES. I think that is the problem we have with it, because, ultimately, in California and under reclamation law as well, unpaid costs all accrue to the power user. As I mentioned, our account now has $118 million in irrigation aid accrued to it. To have a settlement of existing water rights in San Diego further exacerbate what potential liability seems to us to be quite unfair to us.

Senator MELCHER. Are you buying power out of Bonneville?

Mr. FONTES. No, sir; we don't have a contract with Bonneville.

Senator MELCHER. Who buys Bonneville power in California?

Mr. FONTES. The Pacific Gas and Electric Co., surplus power. Most of that power is sold——

Senator MELCHER. Where does that go?

Mr. FONTES. Customers in the Bay Area. Those are surplus power sales. Since the Northwest Power Act of 1981, all the power is sold to the Northwest.

Senator MELCHER. Well, all I want to say is that you are accurate. Call it what you want, it is water that came out of our State, too. So, it isn't so remote for me to be thinking about what you are going to do if this bill becomes law, as 35 Congressmen out of the California delegation of 45 apparently want it to become law, and the two Senators want it to become law.

It isn't very far from where you are at in supplying some water almost to Tehachapi and maybe some power to Tehachapi. You probably already supply that, and this only extends it about 100 miles. And some people in California are getting power out of water that came from Montana.

Mr. FONTES. Through the Bonneville Power Administration?

Senator MELCHER. Yes; that is 2 mills or less. I think some of it goes for about 18 mills.

Mr. FONTES. And some of its goes for 40.

Senator MELCHER. Some of its goes for 40?

Mr. FONTES. Yes, sir.

Senator MELCHER. You mean when you are desperate.

Mr. FONTES. I believe the California Senators this morning mentioned that each of them had problems with the power delivery scheme and the unfunded liability. I believe our amendment, if included in the legislation, would go a long way to solving our problems and, I hope, their problems.

I would like to remind you that there have not been hearings held in the House yet. We have not had an opportunity to put our thoughts in writing and to approach those California Congressman.

Everyone would like to settle water disputes. No one likes to pay lawyers. We include ourselves in that.

Senator MELCHER. All I am trying to be is factual and see the way it really is. You may have to resolve this thing out of the Treasury—because there is no question that the bands were misused. Their rights were misused, and you are not arguing that.

Mr. FONTES. I am not arguing that. It is just the fact that there is no funding mechanism in the bill. It is very clear to us in reading the bill that——

Senator MELCHER. You sure understand what it is about that amendment Mr. Swimmer would like for 4 mills. That is funding if I ever heard it.

Mr. FONTES. I can read the English language, and it says that already, but he wanted to make it more clear. So, looking at the legislative process and the need to make triply sure that the rate would be at 4 mills, I kind of know what is coming in the next decade or the next year as to who is going to pay that. Ultimately, the costs, if unpaid by the Government, will be paid by our customers.

Senator MELCHER. That is true. I understand that, and I am not disputing your testimony. Your testimony is correct as far as I can tell. The facts are, though, that we are asked to pass legislation that will resolve years of litigation. Vista and Escondido well understand what that could mean as well as the bands. They just want to get the hemorrhaging over.

I suspect that we are going to be sympathetic to passing a bill, and I don't know exactly what form it will be in. However, if there are hearings in the House, and I certainly hope there are some early in September, we will be in consultation with those 35 Congressmen, plus or minus a few, and the two Senators from California to try to resolve this.

I am not disputing your testimony. You are both correct, and I know if you are going to lock in a 4 mill price for whatever power is necessary that that is a sacrifice on the part of your ratepayers. I understand that. Something will be paid by them.

Perhaps there is a better way of doing it. We will see.

Thank you both very much.

I think we are down to the last witness, Tom Donnelly from the National Water Resources Association.

Mr. Donnelly, please proceed.

STATEMENT OF TOM DONNELLY, EXECUTIVE VICE PRESIDENT, NATIONAL WATER RESOURCES ASSOCIATION, WASHINGTON, DC

Mr. Donnelly. I would like to go on record right from the start and say we are not testifying against the bands nor against the city of Escondido or Vista.

My name is Tom Donnelly, and I represent the National Water Resources Association. It is an association of the 17 reclamation States and also several ground water districts in the southeastern United States. I also represent our State affiliate in California, the Association of California Water Agencies this morning, and the Central Valley Project Water Users Association.

Within the service area of the Central Valley project, pumping of ground water basins presently exceeds natural replenishment and surface water supplies by 1.5 million acre-feet annually. While projects are planned to assist in alleviating about one-third of this overdraft, such as the proposed Mid-Valley unit of the Central Valley, an overdraft of 1 million acre-feet annually will continue.

Of the contracted supplies of the Central Valley project which amount to 1.1 million acre-feet, there are presently under consideration proposals to commit as much as 25 percent of this water to fish and wildlife purposes as provided in H.R. 3113. Future demands of present Central Valley project contractors through the year 2040 amount to nearly 2 million acre-feet which would have the effect of absorbing nearly 200 percent of present contracted for supplies, leaving an annual deficiency of nearly 1 million acre-feet annually.

S. 2676 would propose to transfer 22,700 acre-feet annually of the already over-subscribed supplies of the Central Valley project approximately 500 miles to satisfy claims of certain Indian bands in the north San Diego County area. In order to do this, already full-subscribed power supplies of the Central Valley project would be allocated to pumping this water over several lifts on its journey to San Diego County, including a 1900 foot lift over the Tehachapi Mountains south of Bakersfield.

Unfortunately, nothing is proposed in S. 2676 that would do anything to develop replacement water supplies or power supplies utilized in this proposed transfer of water and utilization of Central Valley power supplies.

As this committee is aware, well over $250 million Federal tax dollars have been expended to complete the initial stages of construction of the Auburn-Folsom South project. This project is presently stalled because of the desire on the part of the U.S. Bureau of Reclamation to identify potential users of the water produced by the project.

The firm yield of Auburn Dam is approximately 330,000 acre-feet annually, with normal and wet year yields reaching nearly 900,000 acre-feet. This project, once constructed, could easily be the sole source of the water needed by the San Diego County Indians.

We would hope that the members of the Energy and Natural Resources Committee and the Select Committee on Indian Affairs share the concern of our members who would lose water from the already over-committed Central Valley project's current water supplies under the terms of S. 2676.

With the assistance of the Federal Government, the Congress, and the Indians in San Diego, perhaps we can together augument instead of diminish California's water supplies.

That is the end of my testimony, Senator, but I would like to make one comment. We have talked this morning about the 35 or so California members who have signed on the bill. I don't know this for a fact, but my guess would be if you took a look at those members, you would see a very strong north/south division in sponsorship of this legislation.

[Prepared statement of Mr. Donnelly appears in the appendix.]

Senator MELCHER. What do you mean by that? That they come from Los Angeles or San Diego?

Mr. DONNELLY. I would guess so. Congressman Packard certainly could verify that? The vast majority of the sponsorship would be from southern California and not from northern California.

Senator MELCHER. They must have picked up some from northern California. Nevertheless, regardless of how many of them are from northern California, your testimony is good. Is most of this pumping occurring from ground water?

Mr. DONNELLY. I can't tell you exactly where it is occurring, but it is occurring throughout the Central Valley service area.

Senator MELCHER. You are not blaming any of this on the Vista Irrigation District?

Mr. DONNELLY. No.

Senator MELCHER. You are not counting on that?

Mr. DONNELLY. No.

Senator MELCHER. Just on Central.

Mr. DONNELLY. Yes, sir; I would like to say also, Senator, that our position is unanimously supported by all of our member States, and that includes all the reclamation States. We believe this sets a very bad precedent in settling of water claims.

Senator MELCHER. I am not going to disagree with you, but the fact is that votes in California in the House and the Senate apparently are in favor of it rather overwhelmingly. The points you make are valid points, but, nevertheless, it will probably not be viewed as a problem if it is OK with the California representation here in the House and the Senate.

Those of us from the other States may not have any problem with it. My State is one of them, of course, Montana is one of the 17. I suppose while this bill would set a precedent, we would simply say it is basically a California problem as to where they are going to get the water and the power to cut this deal.

The question of water rights, on the surface, seems to me to be unassailable for these Mission bands.

Mr. DONNELLY. If I understand it correctly, Senator, their claim to the water is from the San Luis Rey. Essentially, what we are talking about is two conflicting claims to the San Luis Rey water, and to settle that claim, they are taking water from another source.

I guess the analogy would be that you and I both need $5,000. We only have $5,000 to give, so we take $5,000 from Joe. There is a third party here that is involved that is not in favor of this proposal.

Senator MELCHER. I fully understand. They will take water out of one drainage and use it in another. I understand that, if the aqueducts are built in central California, taking the water over the Tehachapi Pass down to Los Angeles County and San Diego County and Riverside County, that is just what will be done.

The sale of the power to do that is an other issue. We have already heard this administration's testimony on that. It may well be done.

We will attempt to pass a bill that is agreed to. It probably won't proceed until we have that House hearing or at least understand that there is going to be a House hearing and then attempt to see whether or not a bill can be passed.

The alternative to your testimony is, of course, to find the water and just use the water that is there in that drainage. I believe that is what you are testifying to, is it not?

Mr. DONNELLY. To develop an alternative source or an additional source.

Senator MELCHER. I don't know how you will get it unless you can get it out of that river or by pumping it out of the ground.

Mr. DONNELLY. In the testimony, I also mentioned the Auburn-Folsom project.

Senator MELCHER. Yes; I know. Where would the Auburn Dam be?

Mr. DONNELLY. It is approximately in this area.

Senator MELCHER. So, with that as a solution, we would still be taking it out of that drainage and pumping it over Tehachapi Pass and delivering it down into Los Angeles, San Diego, and Riverside Counties, would we not?

Mr. DONNELLY. That is correct, but it would be water that has not been allocated.

Senator MELCHER. What you are saying is that if you can be sure of more coming into the Central Valley, you would go for this deal.

Mr. DONNELLY. I believe what you are saying is correct.

Senator MELCHER. So much for principle.

Mr. DONNELLY. No; not exactly.

Senator **Melcher**. When faced with reality, you are much like the rest of us, Mr. Donnelly. Thank you very much.

That concludes the hearing on this bill. We stand adjourned.

[Whereupon, at 12:02 p.m., the committees adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT CLYDE A. ROMNEY

My name is Clyde A. Romney, and it is a great privilege and honor to be testifying before you this morning in support of the bill, S. 2676. I am a resident of Escondido, California, and a consultant to the San Luis Rey Indian Water Authority and the Vista Irrigation District. Additionally, I enjoyed the distinct honor of serving as Congressman Ron Packard's Administrative Assistant here on Capitol Hill from 1983 to 1985. Your time and attention to this important Indian water settlement legislation is deeply appreciated by all the residents of the northern portion of San Diego County.

In the summer of 1984, a delegation of representatives of the various entities which will be testifying before you today, led by Escondido Mayor Jim Rady and the President of the Vista Irrigation District board, Mr. Ray Betraun, came to the office of Congressman Packard and asked for his assistance in negotiating the settlement of a dispute over water rights to the upper San Luis Rey River which is located in his congressional district. After hearing their presentation and considering the situation, Congressman Packard agreed to become personally involved and lend his good offices to the effort. He then formed an ad hoc committee called the San Luis Rey Indian Water Settlement Task Force, consisting of representatives of the litigants, the affected federal and state agencies, committee and subcommittee staff members of both the House of Representatives and this distinguished body, and other interested parties. I was named by Congressman Packard to serve as the chairman of the settlement task force, and I continued to be very actively involved in the matter up until the time I left Congressman Packard's staff and returned to California late in 1985.

The first meeting of the settlement task force was held here in Washington in December of 1984. From the start, there was a very high level of support and interest on the part of all members of the settlement task force. Throughout the course of the many meetings which followed in locations from Washington to San Diego, there was an attitude of good faith and bona fide effort on the part of the participants, all of whom manifested a clear intent to explore every possible alternative to further costly and frustrating court battles.

The members of the settlement task force learned that the dispute stemmed from the claims of five local bands of the California Mission Indians ("Bands") against the City of Escondido, the Escondido Mutual Water Company, the Vista Irrigation District ("local entities") and the United States Department of Interior. The Bands based their claims on the "Winters doctrine," under which, as you know, each reservation is entitled to rights to all of the water needed to satisfy the purpose for which it was created with a priority as of the date of its formation, regardless of actual use. The claims of the local entities were based on state law, actual use and a series of contracts executed around the turn of the century by the United States on behalf of the Bands.

We also learned that this dispute has been entangled in complex litigation in both the United States District Court in San Diego and before the Federal Energy Regulatory Commission for over fifteen years. While the district court action has yet to come to trial, the FERC matter has already been all the way to the United States Supreme Court where it was remanded for further proceedings. Doubtless, it will take another fifteeen years for the courts to resolve the dispute if Congress fails to act on the pending legislation.

Finally, after innumerable meetings and negotiating sessions,the parties reached an agreement on principles upon which settlement could be achieved. Under the terms of the negotiated agreement (as subsequently modified and refined), the Bands and the local entities will divide the local water of the San Luis Rey River equally between themselves. The local entities are to bear most of the costs of production by way of contribution to the settlement, and the Bands have the right to sell to the local entities any of their share of the water that they do not need.

Unfortunately, the local system is insufficient to meet the reasonable needs of the parties since it generates only about 18,000 acre-feet per year. To solve this problem, the agreement in principle is predicated on the federal government making 22,700 acre-feet of water available per year from federal water resources along with the 72.6 million kWhr of power necessary to deliver the water to the Bands. As part of a unique cost-sharing arrangement, the Bands will pay for this water and associated power at the same irrigation project use rate that would be charged to a new agricultural customer within the present CVP service area.

It is estimated that if the Bands are able to obtain the use of conveyance facilities owned and operated by the California State Department of Water Resources, the Metropolitan Water District, and the San Diego County Water Authority at "cost," the total cost to the Bands for this water will be in the range of $100 per acre-foot. The Indians are obligated to sell 6,000 acre-feet of this water annually to the local entities at cost as their contribution to the operations and maintainence costs of the local entities' existing distribution system. The remaining water will either be used by them on their reservations or marketed through the Metropolitan Water District, using the proceeds to finance their development. Representatives of the Bands are here today, and their testimony will address the economic impact on their reservation lands and people far better than I can.

During and after the time the settlement agreement was being negotiated, Congressman Packard and other members of the settlement task force were meeting with federal, state and local water officials to locate sources of water and power which could be made available to the Bands by the federal government to aid in settlement of the dispute. Many meetings were held with representatives of the Department of the Interior in connection with this task, and a conscientious effort was made to examine such sources as the Colorado River and annexation to the Metropolitan Water District. Finally, it became apparent that the only viable source of water subject to Congressional authority is the uncontracted-for water of the Central Valley Project. Accordingly, S. 2676 commits the federal government to deliver "annually and in perpetuity, 22,700 acre-feet of firm project water" from the federal Central Valley Project to the Bands.

At this point, Mr. Chairman, I would offer for the record a summary of S. 2676 which has been prepared by the parties for your use and consideration. It contains an overview of the settlement and a detailed review of the various provisions of the bill.

Please let me assure you that great care was taken in negotiating the proposed settlement and drafting the authorizing legislation to avoid affecting the vested or contractual rights of any of the present water or power beneficiaries of the Central Valley Project. The 22,700 acre-feet of water which the federal government would sell to the Bands under the bill is less than a quarter of one percent of the entire Central Valley Project yield, and only about two percent of the firm water supply that is not presently under contract. Likewise, the approximately 72.6 kWhr of erlectricity required to deliver the water to reservation lands is less than one percent of the power generated by the Central Valley Project. Moreover, the power would be taken by the Bands at times when it would otherwise be sold as "surplus" to Pacific Gas & Electric Company, thereby not affecting the energy available to the federal government's preference power customers.

It is respectfully submitted, Mr. Chairman, that testimony today will demonstrate that S. 2676 represents a milestone in the on-going process of settling Indian water claims. Continued litigation is clearly not the answer. It would be complex, expensive and worst of all, it would not resolve many underlying problems between the parties. Nobody, including the American taxpayer, would benefit from the continued risks and uncertainties of a return to the courts.

In contrast, this settlement provides the best, and perhaps the only, viable solution. Please consider the benefits of a negotiated resolution of this dispute:

- FLEXIBILITY -- the legislation before you permits the parties to tailor solutions in the best interest of all parties in fulfillment of the rights of and obligations to the Bands and their non-Indian neighbors in a manner that is least disruptive to each.

- "WET WATER" -- the Bands will have all the advantages of an actual, or "wet," water resource, rather than a mere paper right without the capital or facilities to put them to use in a meaningful manner.

- SHARED RESPONSIBILITY -- this settlement is predicated on a unique partnership relationship, requiring a cooperative endeavor between both Indian and non-Indians in place of the adversary and often hostile relationships that have been the rule for generations.

- NOMINAL COST -- in contrast to some other Indian water settlements, this bill has a nominal fiscal impact on the U.S. Treasury. Since the Bands will actually be paying for the water and power, and existing facilities will be contributed by the local entities to provide water throughout the reservation lands, enormous savings will be achieved.

- ENVIRONMENTAL IMPACT -- the settlement is environmentally sound and promotes conservation and sound water management practices since the Bands may sell water which they do not choose to utilize on the reservations.

I thank the Chairman for this opportunity to speak in favor of the passage of S. 2676, and applaud the statesmanship of our state's two distinguished Senators who have joined together with Congressman Packard in what is truly a selfless endeavor on behalf of their Native American constituents.

EXPLANATION OF S. 2676
SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT ACT

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EXPLANATION OF S. 2676
SAN LUIS REY INDIAN WATER RIGHTS SETTLEMENT ACT

A. OVERVIEW.

Indian water rights disputes are ubiquitous throughout the West. Under the "reserved rights" or "Winters" doctrine [named after the decision in Winters v. United States, 207 U.S. 564 (1908)], Indian reservations have a right to all of the available water that they need with a priority date as of the date they were created, regardless of when -- or if -- the water is first put to use. Historically, the development of Indian reservations in the arid West has generally been slow, while adjacent non-Indian lands have been developed much more rapidly, using most of the available water resources. As a result, many Indian reservations have large, but mostly unquantified and unused, reserved water rights which, if put to use, could displace existing non-Indian uses of water and significantly impair non-Indian investments and local and regional economies.

In its 1973 Report to Congress and the President, the National Water Commission concluded that the federal government is largely responsible for this problem:

> During most of this 50-year period [following the decision in Winters v. United States, 207 U.S. 564 (1908)], the United States was pursuing a policy of encouraging the settlement of the West and the creation of family sized farms on its arid lands. In retrospect, it can be seen that this policy was pursued with little or no regard for Indian water rights and the Winters doctrine. With the encouragement, or at least the cooperation, of the Secretary of the Interior -- the very office entrusted with protection of all Indian rights -- many large irrigation projects were constructed on streams that flowed through or bordered Indian Reservations, sometimes above and more often below the reservations. With few exceptions the projects were planned and built by the Federal Government without any attempt to define, let alone protect, prior rights that Indian tribes might have had in the waters used for the projects.... **In the history of the United States Government's treatment of Indian tribes, its failure to protect Indian water rights for use on the Reservations it set aside for them is one of the sorrier chapters.**

Indian water rights disputes should be resolved in a manner that is least disruptive to existing non-Indian uses of water and at the same time enables Indian reservations to become viable, economically self-sufficient communities. Litigation is not the answer. Indian water rights litigation is complex, expensive, and time consuming. It frequently does not resolve many of the underlying problems, and often makes it more difficult to implement plans providing for the highest and best uses of scarce water resources. Moreover, it always subjects both the Indian and the non-Indian communities and their economies to enormous uncertainties and risks.

Settlement provides the best, if not the only, viable solution. The advantages of negotiated settlements include:

a. The ability to tailor solutions to the unique circumstances of each individual situation, and to fulfill the rights of and obligations to Indian tribes in the manner that is least disruptive to their non-Indian neighbors;

b. The ability to provide Indian reservations with "wet water", as opposed to "paper" water rights without the capital or the facilities necessary to put them to use;

c. The ability to promote conservation and sound water management practices; and

d. The ability to establish the basis for cooperative partnerships between Indian and non-Indian communities to replace the adversary and often hostile relationships that currently exist.

Presidents Reagan and Carter adopted official policy positions recognizing the problems posed by Indian water rights disputes throughout the West and encouraging the resolution of those disputes through negotiated settlements rather than by continued litigation. (See President Reagan's Statement, House Doc. No. 191 (97th Cong., 2d Sess.) and President Carter's 1978 Water Policy Statement.) In addition, the governors of the Western Governors' Policy Office have sent a formal resolution to the Secretary of the Interior encouraging negotiated settlement as the preferred solution to conflicts between Indian water rights and non-Indian uses. That resolution was endorsed by the Western Regional Council, the Native American Rights Fund, and the Council of Energy Resource Tribes.

Since 1978, Congress has enacted three Indian water right settlement statutes, two of them pertaining to the Ak-Chin Reservation in Arizona and one involving the Papago Reservation, also in Arizona. (See Act of July 25, 1978, 98 Stat. 409; Act of October 12, 1982, 96 Stat. 1261, 1274; Act of October 14, 1984, 98 Stat. 2698.) In the 1982 Papago statute, Congress found that:

> the [existing and prospective] lawsuits not only will prove expensive and time consuming for all participants, but also could have a profound adverse impact upon the health and development of the Indian and non-Indian economies of southern Arizona;
>
> it is in the long-term interest of the United States, the State of Arizona, its political subdivisions, the Papago Indian Tribe, and the non-Indian community of Southern Arizona that the United States government

> assist in the implementation of a fair and equitable settlement of the water rights claims of the Papago Indians respecting certain portions of the Papago Reservation; and
>
> the settlement contained in this title will --
>
> (A) provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses; and
>
> (B) insure conservation and management of water resources in a manner consistent with the goals and programs of the State of Arizona and the Papago Tribe.

96 Stat. at 1274-1275.

The settlement that would be implemented by the passage of S. 2676 would serve as a model for other settlements nationwide. It exemplifies all of the advantages of settlement over litigation, particularly in its establishment of the basis for both Indian economic self-sufficiency and the formation of a cooperative venture between the Indians and the communities of Escondido and Vista for the efficient development and sound management of their water resources. Moreover, the federal government would not make any direct financial contribution to the settlement. Finally, the cost to the federal government of providing the additional water and power needed to implement this settlement would be very small, both in absolute terms and in comparison to the costs of other recent Indian water rights settlements.

B. THE PRESENT DISPUTE

As is the case with most Indian water rights disputes in the West, the underpinnings for this one were laid around the turn of the century. While the United States was in the process of setting aside the Indian Reservations in the San Luis Rey River Valley, Escondido's predecessor was busy making water appropriations under state law and building a thirteen mile long gravity-flow canal (called the Escondido Canal) from the San Luis Rey River, across a mountain range, and into the next watershed.[1] There, winter flood flows from the San Luis Rey were stored in Lake Wohlford for distribution during the long, dry summers to the area of what is now the City of Escondido, California.

Some thirty years later, in the early nineteen twenties, Vista's predecessor purchased the 42,000 acre Warner Ranch and built a dam and reservoir at its western boundary, thus controlling the headwaters of the San Luis Rey. Escondido and Vista then combined their resources, and since about 1922 have controlled and diverted nearly 90% of the water which originates above the San Luis Rey River intake to the Escondido Canal, which is located on the La Jolla Indian Reservation upstream from four other Mission Indian Reservations: the Rincon, San Pasqual, Pauma, and Pala. A general map of the area which shows the San Luis Rey River, the five Indian Reservations, Escondido, Vista, and the principal water facilities is attached to this explanation.

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[1] The Escondido Canal originates on the La Jolla Indian Reservation and crosses portions of the La Jolla, Rincon, and San Pasqual Reservations enroute to Lake Wohlford.

To secure rights of way for the canal and to assure themselves that they had the water rights they needed to protect their investments,[2] between about 1892 and 1924, Escondido's and Vista's predecessors obtained federal licenses and permits[3] and entered into a series of contracts between themselves, with the Secretary of the Interior acting for the United States on behalf of the Indians, and with one of the Indian Bands. All parties operated under these various licenses, permits, and contracts until 1969, when the Indians filed suit in Federal District Court in San Diego. By this suit, which the federal government later joined on the Indians' behalf, the Indians seek to have all of the contracts and permits declared void, to have their Winters rights adjudicated, and to recover substantial money damages from Escondido and Vista. Escondido and Vista dispute the Indians' claims. They also contend that the federal government should be held responsible for any losses they may sustain in the litigation because they relied upon the actions of the federal government, and particularly those of the Secretary of the Interior, when they invested millions of dollars in constructing and maintaining water systems based on the availability of supplies from the San Luis Rey River basin.

To further complicate matters, in the early nineteen seventies the Indians and the United States intervened in Escondido's efforts to renew its federal power license (see footnote 3) and sought to take control of the entire project, either by having the new license issued to themselves or by the imposition of conditions on any new license issued to Escondido and Vista. That proceeding has been through extensive hearings before the Federal Energy Regulatory Commission (the successor to the Federal Power Commission), through review by the Ninth Circuit Court of Appeals, and all the way up to the United States Supreme Court, from which it was remanded back down to the Commission for further proceedings, thus beginning the process anew.

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[2] These investments include two dams, a wellfield, a canal, two hydro-power plants, and the land required by these facilities. The replacement cost of the water development facilities alone is in excess of $40,000,000. (See footnote 8 for further detail.) The groundwater basin itself (when combined with the guaranteed annual supply that it makes possible -- see page 6) is worth an additional $24,000,000 or more.

[3] This included a fifty year hydro-power license for Escondido's two power plants and related facilities which was issued in 1924 by the Federal Power Commission. As discussed below, Escondido's efforts to renew this license have already brought the parties all the way to the United States Supreme Court. The Supreme Court remanded that proceeding to the Court of Appeals, which in turn remanded it back to the Commission. The parties will have to start relitigating the relicensing proceeding all over again in the absence of a negotiated settlement.

Meanwhile, after nearly seventeen years the water rights action in the Federal District Court has not yet gone to trial. The trial was scheduled to begin in November of 1985, but has been postponed to enable the parties to concentrate their efforts on the enactment of S. 2676.

C. THE PROPOSED SETTLEMENT

The settlement which S. 2676 would implement would put an end to these seemingly interminable and expensive legal proceedings. It consists of two basic parts:

1. The division of the local water and the costs associated with its development and distribution among the Indians, Escondido and Vista; and
2. The purchase by the Indians and delivery to the area of their Reservations of Central Valley Project (CVP) water developed by the federal government.

1. The Local Water

The local water component of the agreement in principle reached by the five Indian Bands, Escondido and Vista provides for dividing the waters of the San Luis Rey River System that originate upstream from the intake to the Escondido Canal; sharing the use of Escondido's and Vista's existing water development facilities; operating, maintaining, replacing, and further developing the existing facilities; guaranteeing a minimum annual supply of water for the Bands' on Reservation use; and generating substantial profits for the Bands from the sale to Escondido and Vista of that portion of the Bands' share of the San Luis Rey water that they do not need at any given time.

Instead of the historical 90-10 split between Escondido and Vista on the one hand and the Bands on the other, the parties have agreed to divide the local water 50-50. To accomplish this end, Escondido and Vista have agreed to share with the Bands the use of their existing facilities. These include Henshaw Dam and Reservoir and the Warner Wellfield, which are located on (or under) land owned by Vista upstream from the Reservations, and the Escondido Canal, which provides the only practical means of delivering water to portions of the Reservations. In addition, Escondido and

Vista have agreed to purchase from the Bands any water that they do not need for use on their Reservations for 90% of Escondido's and Vista's cost for obtaining water from their alternative source[4] for the first 7,000 acre feet per year, and 80% of that cost for the remainder.[5] Finally, to assure the Bands a reliable supply of water even under the most severe drought conditions,[6] Escondido and Vista have agreed to guarantee them a minimum of 7,000 acre feet of local water per year to the extent it is needed for use on their Reservations.

This combination of benefits -- the right to 50% of the **developed** local water, the shared use of Escondido's and Vista's local facilities, the buy-back provision, and the 7,000 acre foot per year guarantee -- would provide the Bands with a dependable and useful supply of water. Moreover, it would do so without requiring them to construct expensive new facilities, and at the same time would provide them with a substantial cash flow which they could use immediately for the development of Indian enterprises.[7] In other words, the settlement would give the Bands wet water immediately, not just abstract, theoretical water rights that exist only on paper and that they may never be able to use.

The cost to the Bands of these benefits would be relatively minor. Escondido and Vista would continue to bear all of the costs of operating, maintaining, and, if necessary, replacing Henshaw Dam, the Escondido Canal, and Wohlford Dam, and Vista would continue to be solely responsible for repaying the principal and interest on the $7,000,000 indebtedness it incurred in 1980 in connection with the construction of a flow retardation structure in front of Henshaw Dam. The Bands would pay all of the costs of covering or undergrounding the Escondido Canal where it crosses portions of the San Pasqual Reservation. The Bands, Escondido, and Vista would share the costs of operating, maintaining, replacing, and further developing the Warner Wellfield facilities: the power costs would be split 50-50 between the Bands on the one hand and Escondido and Vista on the other, while the Bands would pay 40% and Escondido and Vista 60% of the remaining operation, maintenance, replacement, and development costs.

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[4] Escondido's and Vista's alternative source is water imported from the Colorado River and Northern California by the Metropolitan Water District (MWD) and sold and delivered to them via the San Diego County Water Authority (SDCWA). They currently pay $202 per acre foot for most of this water.

[5] This buy-back provision is in lieu of a substantial up front cash contribution which was offered by Escondido and Vista but rejected by the Bands. It also eliminates the need for an economic development fund fueled with federal dollars, the likes of which has been part of other Indian water rights settlement laws enacted by Congress.

[6] Unlike Escondido and Vista, the Bands do not have access to an alternative source of water. To gain such access, they would have to annex their lands to MWD and SDCWA. This would require them first to find some way around MWD's present moratorium on service of irrigation water to lands annexed after 1976, and then, if they were successful, to pay expensive annexation fees. Moreover, once they were annexed, they would still have to construct expensive new facilities to deliver imported water to their lands, some of which are located many miles across rugged terrain from the existing MWD delivery system.

[7] The Bill requires that this cash flow be used for economic development and specifically prohibits per capita payments. (Bill, subsection 6(b)(4).)

As a result of this division of costs, it is estimated that the average cost of local water to the Bands will be $55 per acre foot compared to $166 per acre foot to Escondido and Vista, exclusive of any additional costs that Escondido and Vista would have to bear to repair or replace Henshaw Dam, the Escondido Canal, or Wohlford Dam.[8]

2. The Imported Water

The second component of the proposed settlement to be implemented through S. 2676 is the federal contribution of imported water and the power required to deliver that water to the area of the Bands' Reservations. One of the major obstacles to settlement in the past has been a shortage of water. The San Luis Rey system can produce an average of about 18,000 acre feet of water per year above the intake to the Escondido Canal. That is not enough to meet the needs of all five Indian Reservations and still provide sufficient additional water to justify Escondido's and Vista's continued involvement on and investment in the River. Hence, the litigation is do or die for everyone. The proposed settlement under S. 2676 would solve this problem by bringing an additional 22,700 acre feet of water per year from the Central Valley Project (CVP), a federal reclamation project located entirely within the state of California, to the area of the Reservations at a cost to the Bands of approximately $100.00 per acre foot.[9]

The CVP water would be delivered through existing facilities that are owned and operated by the State of California, the Metropolitan Water District of Southern California (MWD), and the San Diego County Water Authority (SDCWA). The federal government would not be responsible for the construction of any new facilities and the Indians would pay all of the costs of using State, MWD, and SDCWA facilities to convey the CVP water from the Sacramento-San Joaquin Delta to northern San Diego County.

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[8] The replacement costs of Henshaw Dam, the Escondido Canal, and Wohlford Dam are estimated to be approximately $24,200,000, $11,000,000, and $2,200,000, respectively. In essence, Escondido and Vista have agreed to self-insure the continued operability of these facilities. If insurance were available -- and it is not -- the amount of the premium would be based largely on the replacement cost of the facilities to be insured.

[9] By way of comparison, Escondido's and Vista's present cost for locally produced water is approximately $100.00 per acre foot and for imported water is approximately $200.00 per acre foot.

Great care has been taken in negotiating the proposed settlement and drafting S. 2676 to avoid affecting the vested or contractual rights or legitimate expectations of any of the present water or power beneficiaries of the Central Valley Project. The 22,700 acre feet of CVP water which the federal government would sell to the Indians under the Bill is presently uncontracted for, is less than a quarter of one percent of the Central Valley Project yield, and is only about two percent of the firm CVP water supply that is not presently under contract. In addition, the federal government would sell the Indians the approximately 72.6 million kWh of electricity required to deliver the water to the area of their Reservations. This is less than one percent of the power generated by the Central Valley Project. Moreover, the power would be taken by the Bands at times of high energy generation when it would otherwise be in excess of the amount needed to satisfy the federal government's obligations to existing project use and commercial firm (preference) power customers, and would therefore be "banked" with Pacific Gas & Electric Company (PG&E).[10] Consequently, its use by the Bands would not affect the energy available to satisfy the CVP's presently existing obligations and demands or the vested rights of existing CVP customers.

Under S. 2676, the Bands would pay the operation and maintenance components, but not the capital components,[11] associated both with the CVP water itself and with the federal power that is needed to deliver it to the area of the Reservations. The Indians could either use the CVP water or sell it to others. The revenues to the Indians from any sale of that water, like the revenues from any sale of their share of the local water to Escondido and Vista, would have to be used for their economic development; they could not be distributed per capita.

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[10] PG&E purchases and "banks" this excess power under an agreement known as "Contract No. 14-06-200-2948A" and sells it back to the federal government during other times of the year when the CVP is not generating enough power or cannot buy sufficient less expensive power from other sources to satisfy both its project use and preference customers' demands. It was originally thought that the power banked and the power withdrawn under Contract 2948A would, on average, balance. However, in practice, there have been net deposits in every year of the contract's existence and much more power has been banked than has been withdrawn. In fact, there is presently enough power in the bank account (from which withdrawals are made on a first in first out basis) to satisfy all anticipated needs until the expiration of the last of the preference contracts and Contract 2948A at the end of 2004.

[11] All federal water and power facilities required for the implementation of the Bill have been fully constructed and paid for by the federal government.

As part of the overall settlement -- and specifically in return for Escondido's and Vista's guarantee to operate, maintain, and, if necessary, replace Henshaw Dam, the Escondido Canal, and Wohlford Dam -- the Bands have agreed to sell 6,000 acre feet per year of the CVP water to Escondido and Vista. Escondido and Vista would reimburse the Bands for the costs incurred in delivering the water to them.

The proposed settlement thus provides the basis for the five Indian Bands, Escondido, and Vista to work together to efficiently develop and properly manage the local water facilities for their mutual benefit. In addition, the cash flow provided to the Indians by the settlement would allow them to cut themselves from the federal government's purse strings for once and for all, and would do so without the construction of any new federal facilities or any direct federal appropriations. The settlement would thus make up for the government's past mistakes, enable the Bands to fulfill the purposes for which their Reservations were established, and permit Escondido and Vista to obtain a continued return on their investments and the benefits they bargained for and received from the federal government.

D. ANTICIPATED QUESTIONS AND ANSWERS

1. How much would this Act cost the federal government?

ANSWER:

S. 2676 does not require any direct appropriation of funds by the federal government. Rather, it calls for federal contributions in the form of the capital cost components normally associated with:

a. 22,700 acre feet per year of federally developed water from the Central Valley Project (CVP) which is presently uncontracted for;[12] and

b. the power required to deliver the 22,700 acre feet per year of water to the area of the Reservations.

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[12] Not including water committed to Delta outflow under the Coordinated Operations Agreement, the Central Valley Project produces approximately 9,600,000 acre feet of water per year, of which approximately 8,600,000 acre feet is presently contracted for, leaving approximately 1,000,000 acre feet available for contracting.

The Bill further calls for the Indians to pay the operation and maintenance components of both the water and power costs at the CVP's irrigation project use rate.

a. The CVP Water.

The capital cost component of CVP irrigation water is about $1.88 per acre foot at the Sacramento-San Joaquin Delta, or $42,676 per year for 22,700 acre feet of water. Since the facilities associated with this cost have already been constructed and paid for by the federal government, the federal "contribution" of this cost component to the settlement would not have any direct impact on the federal budget. Rather, it would show up as a potentially reimbursable cost that the Bill had made nonreimbursable.

Moreover, the Indians would pay the operation and maintenance cost component of the CVP water they receive at the same rate as is charged to other purchasers of CVP water -- about $1.57 per acre foot, or $35,639 per year for 22,700 acre feet. Consequently, there would be no new or additional federal costs or foregone federal revenues associated with the operation and maintenance expenses entailed in the delivery of CVP water to the Sacramento-San Joaquin Delta.

b. The "Project Use" Power.

Evaluation of the "federal contribution" of the capital cost component associated with the power needed to deliver the water is more complex. It takes a net amount of 3,200 kWh of energy to deliver each acre foot of water from the Delta to San Diego County. The delivery of 22,700 acre feet of water therefore requires approximately 72,640,000 kWh of energy.

The power generated by the Central Valley Project was intended by Congress when it authorized the CVP to be used primarily for delivery of project water and sold with the water for that purpose at the "project use" rate. S. 2676 would require the Indians to pay the operation and maintenance portion of that project use rate, which is currently 4.67 mills per kWh, or $339,229 per year for 72,640,000 kWh. The Bill would not, however, require the Indians to pay the capital portion of the project use rate, which is currently 1.94 mills per kWh for irrigation project use power, or $140,922 per year for 72,640,000 kWh. Thus, if it is assumed that the power purchased by the Bands would otherwise be sold to some other CVP customer for irrigation project use purposes, the analysis of the federal contribution of power would proceed exactly as it did for the federal contribution of water. The federal contribution would consist of the capital component only -- $140,922 per year -- and since the facilities associated with this cost have already been constructed and paid for by the federal government, the federal "contribution" of this cost component to the settlement would not have any direct impact on the federal budget. Rather, it would show up as a potentially reimbursable cost that the Bill had made nonreimbursable.

However, the power which the Indians would purchase under the Act would not, at least at the present time, otherwise be used by other CVP irrigation project use customers. Rather, it presently is excess to the needs of not only the project use but also the preference customers and is being "banked" with Pacific Gas & Electric Company for about 35 mills per kWh (see footnotes 10 and 13). Under these circumstances, the government will forego potential revenues by selling the power to the Indians for delivery of project water (as it does when it sells power to any other project use customer for delivery of project water) instead of "banking" it with PG&E. At current rates, the net foregone revenue amounts to $2,167,532 annually.[13]

2. Why should the federal government forego those additional revenues?

ANSWER:

There are several justifications for this federal contribution.

First, it would be a relatively small price to pay for the very substantial benefits that the settlement would produce. S. 2676 would avoid the construction of costly new water facilities at federal expense or the creation of a tribal economic trust fund fueled with federal dollars. (By way of contrast, the federal government recently committed itself to expenditures of $132,000,000 and $86,000,000 in furtherance of water rights settlements involving two Arizona tribes.) Moreover, the federal government will have to continue to bear significant litigation costs if the dispute has to be resolved in court.

Second, the treatment of the five Indian Bands under S. 2676 would be very similar to the treatment of non-Indian water users under the federal reclamation laws in general and under those governing the Central Valley Project in particular. The cost of power to project water users has been limited to the actual cost of generating the power that is used to deliver their water. That cost is and has been substantially less than the federal government could obtain if the power were sold on the open market. There is no reason to make the Indians pay any more for their CVP power and water than other CVP water users pay for their CVP power and water.

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[13] The irrigation project use rate is currently 1.94 mills/kWh for capital and 4.67 mills/kWh for operation and maintenance for CVP power and $1.88 per acre foot for capital and $1.57 per acre foot for operation and maintenance for CVP water. The price that PG&E pays for the surplus power which it banks varies greatly, but the gross "foregone revenue" cost that the Bill would create averages about 35 mills/kWh x 72,640,000 kWh = $2,542,400 for the power which the Bands would purchase under the Bill for delivery of CVP water. Under the Bill, the Bands would pay 4.67 mills/kWh x 72,640,000 kWh = $339,229 for this power and 22,700 acre feet x $1.57 per acre foot = $35,639 for CVP water, for a net "foregone revenue" of $2,542,400 - $339,229 - $35,639 = $2,167,532.

Third, the federal government has traditionally provided that the capital costs of certain features of federal reclamation projects, flood control and fish and wildlife benefits in particular, are nonreimbursable because they fulfill important public policies. The same rationale applies to this situation. In fact, Congress has specifically deferred reimbursement of construction costs of any government irrigation project which includes Indian lands for as long as the lands remain in Indian ownership (25 U.S.C. Section 386a). So, the five San Luis Rey Indian Bands will not be treated any differently than other Indian tribes under existing federal law.

Fourth, one of the authorized purposes of the Central Valley Project is to benefit Indian tribes. If S. 2676 is enacted, the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands will be the first Indians to receive any such benefits. S. 2676 will therefore fulfill one of the original purposes of the Central Valley Project.

Fifth, the CVP water and power provided to the Indians under S. 2676 are in lieu of local water claimed by the Indians but to which Escondido and Vista will be entitled under the proposed settlement. The CVP water cannot serve that function or be delivered to the vicinity of the Reservations unless it is accompanied by low cost power. Because the federal government was responsible for permitting Escondido and Vista to divert the waters of the San Luis Rey River away from the five Indian Reservations, it is equitable for the federal government to bear some of the costs associated with providing a suitable replacement supply.

3. What about "preference customers" of CVP power? Won't their rights be affected by this Act?

ANSWER:

Not until at least the expiration of their existing contracts in 2004. After that, it is difficult to say how this bill will affect them.

The proposed settlement and S. 2676 have been carefully crafted so as not to affect any of these preference customers' rights or legitimate expectations under existing contracts. As stated above, the CVP power that would be provided to the Indians is surplus to the needs of both the present project use and preference customers. S. 2676 also specifically prohibits any additional costs which it or the settlement creates from being passed on to those preference customers during the remaining terms of their contracts. (Subsection 5(b)(4).)

No provision has been made, however, with respect to potential future preference power contracts. All existing preference power contracts and Contract No. 2948A with PG&E (the "banking" contract) expire by the end of 2004. No one knows how CVP power will be allocated to non-project use customers in the future, and the post 2004 effect of S. 2676 will depend on the terms of future preference power allocation policies and contracts.

4. How much is it likely to cost the federal government if this Act is not passed?

ANSWER:

That is hard to say. It depends in part on the outcome of lengthy and complex legal proceedings, which is impossible to predict. It also depends on the expense to the federal government of satisfying its trust responsibilities to the Indians.

If the Indian Bands win the litigation and obtain the rights to more water than they now have, they will still need funds to construct the facilities that will be necessary to put their "paper" water rights to actual use. Presumably, they will seek those funds from the federal government. One of the ironies of this law suit is that the Bands could win the right to all of the natural flow of the river that they can use, yet be in no better position than they are now because of the lack of facilities to capture the flow and put it to use.[14]

Moreover, if the Indians win and their victory results in the local entities' paying substantial damages or losing the right to use their local water facilities, the local entities will seek recompense from the federal government.

If, on the other hand, the Bands lose the litigation, they will need both another source of water and even more expensive facilities to put that replacement water to use.

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[14] One of the strong points of the proposed settlement is that it allows Escondido's and Vista's existing facilities to be used to put one half of the developed flow of the river system to full beneficial use for the Indians immediately.

Again, they will presumably seek funds from the federal government for these purposes.

In any event, if the Settlement Act is not passed, the federal government will continue to bear the substantial expense of protracted litigation. In this regard it should be noted that in addition to bearing the costs of its own attorneys, engineers, economists, and other experts, the federal government has also been paying the attorneys' fees of the Bands.

On the other hand, if the settlement is implemented, many tangible benefits will accrue to the federal, state, and local governments and economies as well as to the Bands themselves. The need for welfare assistance, subsidized housing, food stamps, and other poverty related services to the Indian Reservations will be significantly reduced if not entirely eliminated. The same will be true for the special Indian programs administered by the Bureau of Indian Affairs and other federal agencies, since the settlement will make the Bands economically self-sufficient. Finally, economic development on the Reservations and its ripple effects in the adjacent non-Indian communities will produce increased federal, state and local tax revenues. While difficult to quantify with precision, these benefits could more than offset the decreased federal revenues that would result from S. 2676.

5. How much are the local non-Indian entities contributing to the settlement?

ANSWER:

To facilitate the settlement, Escondido and Vista are giving up their claims to one half of the developed water in the system; guaranteeing the Indians a minimum annual supply of water from off-Reservation sources for use on their Reservations even in dry years; contributing existing capital facilities -- including two dams and a canal -- which have a replacement value in excess of $40,000,000 and undertaking the full cost of operating, maintaining, and, if necessary, replacing them; undertaking more than half of the cost of operating, maintaining, and, if necessary, replacing the facilities necessary to operate a groundwater basin which underlies land which they own upstream from the Reservations;[15] obligating themselves to purchase any local water which the Indians do not need for use on their Reservations at rates which will provide the Indian Bands with a substantial profit which in turn will be used for the economic development of their Reservations; and working with the Indians in negotiations with the State of California Department of Water Resources (DWR), the Metropolitan Water District of Southern California (MWD), and the San Diego County Water Authority (SDCWA) to obtain their cooperation and especially the use of their facilities at a reasonable cost for the delivery of the CVP water to the area of the Reservations.

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[15] The value of the groundwater basin and the guarantee which it makes possible is estimated to be in excess of $24,000,000.

DWR, MWD and SDCWA will also make vital contributions to the settlement. Without the use of their facilities and the integration of the CVP water and power provided by the Act with State project water and power, the settlement would not be possible.

6. Are the Indians contributing anything?

ANSWER:

Yes. They are giving up their claims to one half of the developed water in the system,[16] bearing the full cost of covering or undergrounding the Escondido Canal where it crosses one of the Reservations, paying over forty percent of the costs of extracting water from the Warner Groundwater Basin, paying the operation and maintenance component of the irrigation water project use rate for both the CVP water that they will receive and the power that will be used to deliver the water to the area of their Reservations, paying for all of the additional new conveyance facilities that will be needed to bring water from existing facilities to their respective Reservations, and paying for all new water distribution facilities and irrigation systems on their Reservations.

D. CONCLUSION

The litigation which spawned S. 2676 has been underway for 17 years now, and the federal government and the Bands still have nothing to show for all of their efforts. If this Act is passed and the proposed settlement implemented, five Indian communities will have the means to become economically self-sufficient without further need for the panoply of costly federal Indian services and programs they are now receiving. Instead of being a burden and a drain on the federal government as well as the local taxpayers, the Bands and their members will become positive contributors to the local, regional and national economies.

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[16] The replacement cost of the developed water that the Indians claim from local sources would be in excess of $200.00 per acre foot, assuming that the Indians could get it from MWD, which is unlikely. (MWD now has and for several years has had a moratorium on service of irrigation water to lands annexed after 1976.) In addition, there would be substantial costs -- estimated to be $20,000,000 or more -- for the construction and operation of the facilities that would be needed to get MWD water to the Reservations.

The authors of this Explanation would be glad to respond orally or in writing to any other questions raised by S. 2676.

Dated: August, 1986

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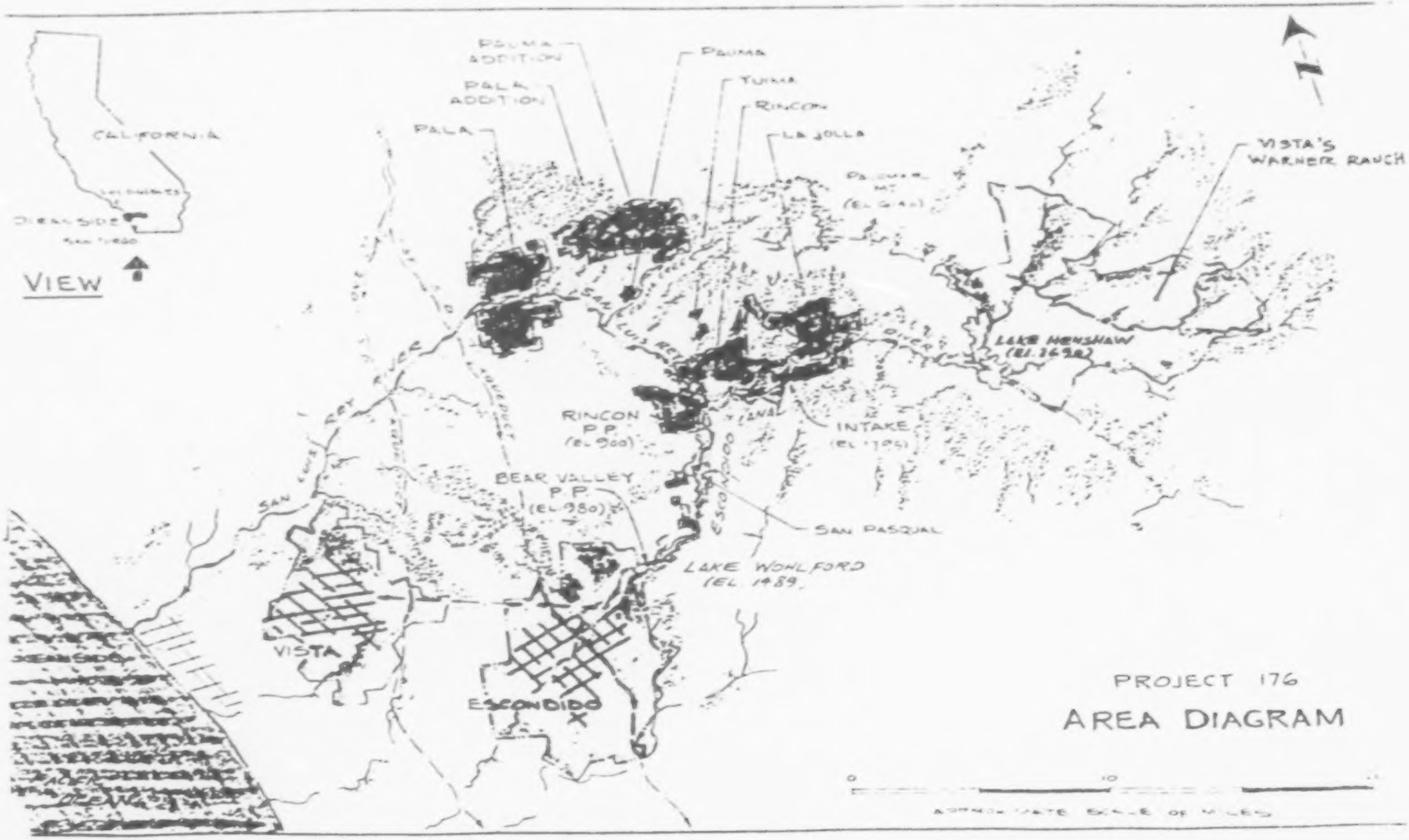
CALIFORNIA
LOS ANGELES
OCEANSIDE
SAN DIEGO
VIEW
PAUMA ADDITION
PALA ADDITION
PALA
PAUMA
TUIMA
RINCON
LA JOLLA
PALOMAR MT. (EL. 6140)
VISTA'S WARNER RANCH
N
LAKE HENSHAW (EL. 2692)
SAN LUIS REY RIVER
AQUEDUCT
CANAL
ESCONDIDO
RINCON P.P. (EL. 900)
INTAKE (EL. 1951)
BEAR VALLEY P.P. (EL. 980)
SAN PASQUAL
LAKE WOHLFORD (EL. 1489)
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APPROXIMATE SCALE OF MILES

PROJECT 176

AREA DIAGRAM

PREPARED STATEMENT OF ROSS O. SWIMMER

Mr. Chairman and members of the Committee, I am here today to offer the views of the Department of the Interior on S.2676, the "San Luis Rey Indian Water Rights Settlement Act."

This bill would implement a negotiated settlement to litigation among the United States, the City of Escondido, the Escondido Mutual Water Company, the Vista Irrigation District, and the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in Northern San Diego County, California. In a suit brought by the Bands and the United States over 15 years ago, Rincon Band of Mission Indians v. Escondido Mutual Water Co., Civ. Nos. 69-217-S, 72-271-S, and 72-276-S (S.D. Cal.), the Government and the Bands questioned the authority of the local non-Indian water interests to use and convey water from the San Luis Rey River and sought to have the Bands' water rights in that river protected. Preliminary decisions by the Court have been in favor of the Bands and the United States.

For the past year the parties to the litigation have concentrated their efforts on settlement negotiations. If enacted, S.2676, and its companion bill H.R. 4468, would make possible the settlement of a long-standing Indian water rights dispute.

The Department of the Interior has played an active role in facilitating the negotiation of the San Luis Rey settlement because of the extensive Federal Indian water interests at risk. S.2676 reflects the settlement principles agreed to by the parties to the litigation and appears to generally conform to the Administration's policies for settlement of Indian water rights claims.

As described in more detail below, we fully support the negotiated settlement of this Indian water rights litigation and therefore recommend enactment of S.2676. We believe, however, that the implementation of the settlement would necessarily be subject to implementation of the Coordinated Operation Agreement (COA) for the Central Valley Project (CVP) and the State Water Project. Approximately one million acre-feet per annum of CVP water has not been allocated or contracted for use pending implementation of the COA.

Furthermore, we think it is important to point out that this settlement responds to a highly localized and unique set of circumstances. It would be a mistake, therefore, to view S. 2676 as a prototype or precedent for water rights settlements with other Tribes and in other States.

Background

The Mission Indian Bands were settled by the United States on five small and relatively dry reservations in the 1890's in present northern San Diego County. The San Luis Rey River is the principal surface water source of the area. Simultaneously, the neighboring non-Indians were making water appropriations under State law, developing and putting to use the San Luis Rey water. A thirteen mile long gravity flow canal (the Escondido Canal) was built from the San Luis Rey River, across a mountain range, and into the next watershed. There, winter flood flows from the San Luis Rey were stored for distribution during the summer to the area that is now greater Escondido. The canal originates on the La Jolla Indian Reservation and crosses portions of the La Jolla, Rincon, and San Pasqual Reservations. In the 1920's local interests purchased the 42,000 acre Warner Ranch and built a dam and reservoir, thus controlling the headwaters of the San Luis Rey River.

Since 1922, local non-Indian water interests have controlled the headwaters of the San Luis Rey River and have diverted nearly 90% of the water which originates above the five Mission Indian Reservations. In addition to the Escondido Canal, the local water delivery system includes Henshaw Dam and Reservoir, Wohlford Dam and Reservoir, and the Warner Ranch wellfield. Unlike many western water projects, the water storage and delivery facilities in the San Luis Rey Basin were developed using private rather than Federal funds.

Development of the local water delivery system was accomplished through a series of Federal licenses, permits, and contracts. These early Federal grants of authority thus far have been successfully challenged by the Bands and the United States in litigation.

Significant Features of the Settlement

I would like to take this time to highlight the elements of S.2676 that are most significant to the Department's program for the protection and enhancement of Federal Indian reserved water rights.

1. Equitable Allocation of Local Water. Based on available data, the San Luis Rey River system yields an average of 18,000 acre-feet of water annually. The settlement gives the Bands the right to make beneficial use of about 9,000 acre-feet of local water each year and assures that, even in the most severe drought conditions, the Bands will be guaranteed a minimum of 7,000 acre-feet of local water annually, for use on their reservations.

In return, the local water users in the San Luis Rey system will retain an allocation of 9,000 acre-feet of local water, gain the opportunity to purchase a portion of the Bands' share of the local water, and gain the right to purchase an additional 6,000 acre-feet of water imported by the Bands from the Central Valley Project (CVP).

2. Imported Water from the Central Valley Project (CVP). One of the major obstacles to settlement in the past has been the shortage of water available in the San Luis Rey River watershed to accommodate the combined needs of the Bands and the local communities. The settlement resolves this problem by introducing 22,700 acre-feet annually into the San Luis Rey watershed from the Central Valley Project, a federally developed water project in the Sacramento and San Joaquin River systems in northern California. Subject to the execution and implementation of the Coordinated Operation Agreement, there is an annual yield of one million acre-feet of CVP water which has not been allocated or contracted for use. In addition to the water, the CVP will provide the power necessary to deliver the water to the Bands.

One of the original authorized purposes of the CVP is to benefit Indian tribes. If this settlement is enacted, the Bands will be the first Indians to receive such benefits. The 22,700 acre-feet of water, which will be allocated to the Bands, represents less than a quarter of one percent of the CVP yield and about two percent of the firm CVP water supply that is not presently under contract.

3. Water Delivery System. An important feature of this settlement is the willingness and ability of the parties to deliver the water through the use of existing Federal, State, and local canal and aqueduct systems. The Bands' San Luis Rey water allocation will be delivered to the reservations in the existing local canal network. The Bands' imported CVP water will be made available from CVP facilities in northern California and conveyed through the State aqueduct system in cooperation with other non-Federal interests to the San Luis Rey watershed. In short, neither the Bands nor the Federal government will have to construct new water distribution facilities in order to implement the settlement. When completed, this delivery arrangement by Federal, State and local water agencies should be an extraordinary example of cooperative water management.

4. Extensive Cost-Sharing. The Administration's general policy is that if the United States is to make a significant financial contribution to an Indian water rights settlement, the non-Indians who benefit by the settlement must also make a significant financial contribution. The local non-Indian water users have agreed to the following contributions to the settlement:

---use of existing local water delivery systems to convey the Bands' share of the local water to the reservations;

---purchase of water that is surplus to the Bands' needs on the reservations;

---operate, maintain, and replace existing delivery systems for San Luis Rey water; and

---pay 60% of the cost of constructing new facilities and maintaining and replacing structures necessary for optimum use of the Warner Ranch wellfield in the upper reaches of the San Luis Rey watershed, and pay 50% of the annual power costs of operating the Warner Ranch wellfield.

Based on several assumptions, the local non-Indian contribution to the settlement may be estimated to range from $1.5 to $3.18 million.

The Administration's policy does not require Indian tribes to make a cost-sharing contribution to an Indian reserved water rights settlement. However, in this instance the Bands will make the following substantial contribution to the settlement:

---pay the operation and maintenance costs associated with delivery of the CVP water through the Federal facilities, including the operation and maintenance costs associated with the power;

---pay the operation and maintenance costs associated with conveying the CVP water through the non-Federal facilities to the reservation;

---pay 50% of the annual power costs of operating the Warner Ranch wellfield and 40% of the cost of constructing the new facilities or maintaining existing facilities necessary for use of the wellfield; and

---pay the entire cost of covering or placing underground the Escondido Canal where it crosses the San Pasqual Reservation.

Based on several assumptions, the Bands' total contribution to the settlement is estimated at $2,149,715 annually.

The Federal contribution to the settlement will be in the form of foregone revenue from two sources. First, the capital cost associated with the development of the storage and delivery facilities for the Bands' allocation of CVP water would be made nonreimbursable by Section 5 (a)(2)(A) of the bill (approximately $3-4 per acre foot annually).

Second, the energy component of the annual operation, maintenance, and replacement costs would be set at the project use rate. Use of the power required for the settlement will reduce the amount of surplus power now made available at higher rates for other purposes. Allocation of project use power for this settlement is generally consistent with the overall plan for the use of CVP power. Enactment of the settlement would mean that the power potential of the project would be applied to project purposes instead of being sold as surplus power. The foregone revenue associated with this aspect of the settlement is estimated at $2.5 million annually.

Notably, the settlement requires no new construction by the Federal government and requires no appropriation of Federal funds now or in the future.

5. Indian Water Authority (IWA). The San Luis Rey Indian Water Authority is an inter-tribal governmental entity established by the Bands pursuant to duly adopted tribal ordinances. The IWA was chartered by the Bands with the full support of the non-Indian water users to provide a stable and orderly mechanism

for carrying out the water management responsibilities of the Bands. S.2676 provides statutory recognition of the IWA and reaffirms its status as a tribal authority possessing the powers necessary to acquire, use, and manage the Indian reserved water resources designated in the settlement agreement and this legislation.

6. Water Marketing. S.2676 authorizes the Bands, through the IWA, to market water resources for the economic benefit of the Bands. The Department supports the use of water marketing leases by tribes since this practice benefits tribal economic development. The Bands' ability to market water will provide them with a source of capital that obviates the need of the Federal government to make any direct financial contribution to the settlement. The water marketing authority would enable the Bands to raise revenue in excess of $2 million annually, which in turn will contribute to the capital and economic development of the reservations.

There is precedent for approval of Indian water marketing authority. The Southern Arizona Water Rights Settlement Act of 1982 (98 Stat. 1261) contains such a provision. The Fort Peck-Montana Compact, which has been approved by the Administration, also includes authority for water marketing agreements. And, recently the Administration reached an agreement in principle with the States of Colorado and New Mexico on an Indian water rights settlement that provides for water marketing.

Suggested Technical Admendments

We believe that certain amendments are necessary to clarify apparent legislative intent:

--- Section 5(b)(2)--The first sentence should be revised as follows: "The Indian Water Authority shall reimburse the United States for the operation and maintenance costs, but not for construction costs, incurred in providing the power referred to in paragraph (1). Such operation and maintenance costs shall be based on the project use rate for irrigation water pumping." This language is more precise and will prevent future confusion.

--- The bill as it stands is ambiguous as to the extent to which state laws and procedure would be applicable to the allocation of CVP water to the Bands. We recommend that this aspect of the bill be clarified in a way that is acceptible to the State of California and the parties to the settlement.

Conclusion

The Department supports S.2676 for several reasons. First, the bill ensures the Bands of a water supply on terms that will be economically useful.

Second, Indian reserved water is provided in a manner that protects all existing uses of water by non-Indians. This goal is important to all interests.

Third, no new capital construction financed by the Federal government will be necessary. Indian and non-Indian water supplies will be conveyed by making use of existing water delivery systems.

Fourth, the overall settlement provides a substantial benefit to the reservation economies of the Bands relative to the costs associated with the settlement. The Bands will have water for their reservation and marketing authority to put the water to work for capital and economic developments on the reservations.

Fifth, the settlement includes substantial cost-sharing by the non-federal parties.

Finally, enactment of S.2676 will resolve complex, costly and time consuming litigation and establish a basis for a cooperative partnership between the Bands and the non-Indian communities in the San Luis Rey watershed.

THE SECRETARY OF THE INTERIOR
WASHINGTON

AUG . . 1986

Honorable Pete Wilson
United States Senate
Washington, D.C. 20510

Dear Pete:

Thank you for your letter of July 21, 1986, regarding H.R. 4468, the "San Luis Rey Indian Water Rights Settlement Act." Congressman Ron Packard's introduction of this bill and his effective leadership in securing cosponsors have moved this matter substantially closer to resolution. With your introduction of S. 2676 on July 22, 1986, it appears that a settlement of this long-standing Indian water rights dispute is within reach. This presumes, of course, that concerns regarding problems such as north-south water transfers, are resolved.

Your letter addresses three questions about the proposed settlement to the Department. The following are our responses to those questions which are repeated below for your convenient reference.

1. What are the Department's views on H.R. 4468?

Answer. The Department's views on the settlement proposal are being prepared at this time in anticipation of the joint hearings on S. 2676 which have been scheduled for August 11, 1986, before the Senate Select Committee on Indian Affairs and the Committee on Energy and Natural Resources. At this time they are still under review in the Administration.

Generally, we appreciate the financial and economic benefits that can accrue to the federal government through the use of existing, available federal and nonfederal water and power resources to settle Indian reserved water rights disputes. With specific regard to the proposed settlement, I have worked closely with Congressman Packard to facilitate the coordination of technical expertise in this Department and in the Department of Energy needed to determine the technical feasibility of the settlement. We are persuaded that the settlement is technically feasible.

2. Without modifying existing Colorado River water entitlements, is there 22,700 acre-feet of Colorado River water available on a firm basis at the Colorado River Aqueduct intake to meet the needs of the proposed San Luis Rey River Indian water rights settlement?

Answer. No. As you know, the water of the Colorado River was allocated between the upper and lower basin states by the Colorado River Compact in 1922. In 1964 extended litigation among the lower basin states of Arizona, California, and Nevada was resolved by a decree of the Supreme Court. The Court concluded that specific water using entities in California were entitled to 4.4 million acre-feet of water annually, plus a share of any surplus, from the Colorado River. All of the California allocation, including the surplus, is under contract and is being used. Accordingly, Colorado River water could not be made available on a firm basis to meet the needs of the proposed settlement without modifying existing Colorado River water entitlements.

3. In the absence of a firm supply of Colorado River water, would it be possible to make 22,700 acre-feet of Colorado River water available for settlement purposes in those years that this amount of water is surplus to the needs of those parties presently holding an entitlement to Colorado River water? If yes, how often is it estimated that this amount of water will be available?

Answer. No. The Supreme Court decision that resolved claims to water in the lower Colorado River basin determined the states' claims to surplus water. Allocation of the surplus water has been made among the states by judicial decree, and within each state by binding contracts and other agreements. When surplus water is available for use in California, it is used by those who are entitled to it.

If we can be of further assistance to you, please do not hesitate to contact us.

Sincerely,

Don Hodel

DONALD PAUL HODEL

PREPARED STATEMENT OF JAMES M. RADY

I am the Mayor of the City of Escondido, a member of the Board of Directors of the Escondido Mutual Water Company and on their behalf support S. 2676. The purpose and scope of the proposed legislation has been presented by others. My purpose is to briefly highlight the interests of the citizens living in the Escondido valley.

Escondido valley includes about thirty thousand acres of land south of the San Luis Rey river watershed. The City, which lies in the center, was incorporated in 1888. A year later a predecessor of Mutual Water Company, the Escondido Irrigation District, was formed. These entities cooperated in an ambitious plan to divert water from the San Luis Rey river and transport it through precipitous mountain areas to Escondido. Necessary arrangements were made. These included land and right-of-way acquisitions, stock and bond financings, difficult construction, and contracts with the United States on behalf of certain Mission Indian reservations. Later, additional arrangements were made to expand the water and power potential of this water resource. These included contracts with the Henshaw interests, predecessors of Vista Irrigation District, enlargement of the original canal, construction of two power plants, and erection of the largest dam in San Diego County -- Henshaw Dam.

These water and power resources were the sole source of water for the residents in Escondido valley for a half century -- until 1950. At that time the City of Escondido became a member of the San Diego County Water Authority which in 1946 had joined The Metropolitan Water District of Southern California. Soon thereafter, in 1954, the lands in the valley lying outside the City boundaries incorporated into the Rincon del Diablo Municipal Water District and also became a part of the MWD-San Diego County Water Authority complex of water supply entities.

In 1950, when it joined the San Diego County Water Authority, the boundaries of the City included 1,800 acres and served a population of 6,600 citizens. The growth, after World War II, was commencing, but its magnitude was hardly perceived. Annexations to the City doubled its land-size each decade until today about 22,000 acres of the valley are within the boundaries of the City. There are almost 100,000 people living in the valley and nearly 80,000 live within the boundaries of the City.

During the 60's it had become apparent to the leaders of the Mutual Water Company and the City that integration of the two water systems was very desirable. A drought of unprecedented proportions was plaguing San Diego County. The local resource from the San Luis Rey river was inadequate to provide for anticipated growth and was also suffering from the continuing drought. Duplicative facilities were being constructed which, if continued, would become an unnecessary economic burden to the water users in the valley. Consequently, an agreement was reached in 1969 between the Mutual Water Company and the City which contemplated physical integration of the two water systems by vesting ownership and operation responsibilities in the City.

The litigation against us brought by the Indian Bands in 1969 and later supported by the Department of Justice has frustrated and thwarted these plans as well as a contemplated merger with Rincon del Diablo Municipal Water District which would complete the water consolidation.

We are proud of the heritage created by four generations of community water leaders. We intend to zealously guard and protect it. Our predecessors acted openly and in accord with procedures outlined for them by U.S. Government officials. All waterworks serving Escondido valley have been constructed and financed without federal grant or other federal largesse. The settlement principles outlined in S. 2676 will require that Escondido interests forego many benefits which we truly believe belong to us because of past efforts, sacrifices and legal commitments.

Nevertheless, in deference to the dedicated efforts of all those who have participated in developing this legislation and in recognition of the principle that a poor settlement is better than a good lawsuit, I am authorized to state that the City and the Mutual Water Company wholeheartedly support S. 2676. If it becomes law, another decade of litigation will be avoided. The contemplated settlement will establish new rights and obligations which, it is believed, will result in a fair and equitable solution for all interests directly involved -- the Indian Bands, the U.S. Government, Vista Irrigation District and Escondido.

PREPARED STATEMENT OF RAY T. BETRAUN

Mr. Chairman, members of the Committee, I am Ray T. Betraun, the president of Vista Irrigation District. Since before I was elected to its Board of Directors fifteen years ago, Vista has been fighting in Federal District Court and in proceedings before the Federal Energy Regulatory Commission with five bands of Mission Indians and the United States government over our rights to the Warner Ranch and the water we produce there. This law suit has been extremely expensive and has caused no end of problems for long range planning and even day to day operations. Our lawyers tell us that if we cannot settle, the suit may last another fifteen years.

Vista owns the Warner Ranch and Henshaw Dam and Reservoir, which are located on the ranch. We depend on water produced by the dam and by wells on the ranch for about half of our water supply. We have invested a tremendous amount of money in these water production facilities over the years. In making these investments, we have relied a great deal on actions taken by our predecessors in interest to secure title to the ranch and the right to use the water produced there. We have especially relied on a contract entered into with the United States of America in 1922 which we thought resolved for once and for all the relative water rights of our predecessors and the Mission Indians.

Vista's interest in the Warner Ranch and its water production facilities has its roots in the work of William G. Henshaw and his San Diego County Water Company. Henshaw was one of the first to recognize the water production potential of the Warner Ranch, which he purchased in 1911. His chain of title begins with two land grants from the Mexican government which were patented to his predecessors under the Treaty of Guadalupe Hidalgo of February 2, 1848. By the time he purchased the ranch, the title of his non-indian predecessors had been confirmed by the United States Supreme Court against claims by the Mission Indians, who had considered the land to be theirs.[1]

Having purchased the ranch, Henshaw went to great lengths to secure the water rights necessary for the operation of his proposed dam and reservoir. By the time he purchased the ranch, the Escondido Mutual Water Company was already diverting water from the San Luis Rey River downstream from Henshaw's proposed dam site. In 1912, Henshaw and Mutual entered into an agreement resolving their respective water rights in the event Henshaw built his proposed dam and reservoir.[2] At about the same time, Henshaw posted notices of appropriation at the proposed dam site to perfect his water rights under state law. Between about 1912 and 1914, he also obtained deeds from all of the non-indian owners of riparian land below the site of the proposed dam by which they gave up any rights they may have had to object to Henshaw's construction of a dam and impoundment and diversion of water upstream from their lands. Finally, in hopes of avoiding any conflict with the Mission Indians or the United States, in June of 1922 Henshaw entered into a contract with the "United States of

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[1] Barker v. Harvey, 181 U.S. 481 (1901). The United States was held bound by that decision in United States v. Title Insurance and Trust Company, 265 U.S. 472 (1924).

[2] In November of 1922 Henshaw's corporation, the San Diego County Water Company, entered into a new agreement with Mutual which revised and greatly expanded upon the 1912 agreement. This 1922 agreement has formed the foundation of the local entities' diversion and division of waters from the San Luis Rey River System ever since.

America by its Secretary of the Interior, for and on account of the Indians of the Rincon and Pala Reservations" which he hoped would resolve for once and for all any potential water rights disputes between himself and the Indian reservations which would be effected by his proposed dam and reservoir. These contracts and others between Mutual, the United States, and in some cases the Indian Bands themselves, formed the basis for the production of water from the upper San Luis Rey River System without question or challenge until 1969, when the Indians filed suit in Federal District Court.

Vista Irrigation District's use of water from the Henshaw facilities began in 1926. At first, Vista merely contracted for its Henshaw water with the San Diego County Water Company. However, in 1946 Vista purchased all of the stock of the company and acquired the Warner Ranch and its facilities. It was not until June of this year that we finally paid off the last of the $4.7 million in bonds that we had to issue forty years ago in order to make that purchase. After the great lengths to which Henshaw had gone to secure his rights to the ranch and to the water that was produced there, we were confident that the ranch and its facilities were a secure and reliable source of water for the people of our district. We never expected that the Indians -- and certainly not the United States -- would later seek to repudiate contracts which had been relied upon and gone unchallenged for over twenty years.

In 1950, Vista was called upon to increase its investment in its Warner Ranch water facilities. The drought years of the late 1940s had taken their toll, and the surface water stored behind

Henshaw was rapidly being depleted. To further develop what was then its only source of water, Vista constructed a well field above the reservoir and began tapping the 775,000 acre foot ground water basin which underlies the Warner Ranch. In spending $500,000 for this purpose in 1950 and 1951, and another $250,000 in 1957, Vista again relied on the great lengths to which its predecessors had gone to secure their rights to the Warner Ranch and the water produced there, and especially on Henshaw's 1922 contract with the United States. Although this well field continues to serve Vista, it could be greatly improved. Vista has been reluctant to spend the necessary funds for repairs and replacements, however, because of the uncertainties caused by the litigation which this bill is designed to resolve.

In the 1970s Vista was again called upon to invest substantial moneys in its Warner Ranch water facilities. On February 20, 1973, the California State Department of Water Resources, Division of Safety of Dams, restricted storage in the then 200,000 acre foot Henshaw Reservoir to only 18,000 acre feet because of its fear that an earthquake could cause the dam to fail. Two years later it reduced the maximum allowable storage to 11,000 acre feet. Vista studied the situation in great detail, and decided that its only viable alternative was to reinforce and modify Henshaw Dam. The engineering studies had been completed, the EIR had been prepared, and the groundwork had been laid for the $7 million bond issue which would be necessary to finance the work, when, in April of 1979, the United States filed a motion asking the Federal District Court to declare that the contracts on which Vista and Escondido had been relying, including those entered into by the United States itself, were void. In so doing, the United States reversed its longstanding position that the contracts were valid.

Vista was shocked, as it had continued to rely on the validity of its longstanding contract with the United States. We nonetheless decided to go forward with our $8 million modification and reinforcement of Henshaw Dam. Ironically, one of our reasons for going forward was the prominent mention in the 1922 contract between Henshaw and the United States of the flood control benefits provided to the downstream Indian Reservations by the dam. Until the year 2020, Vista will continue to pay $700,000 per year to pay off the bonded indebtedness that it incurred in order to finance the modifications to Henshaw Dam.

In summary, Vista's predecessors, William G. Henshaw and his San Diego County Water Company, went to great lengths to secure a clear title to the Warner Ranch and to acquire all of the rights necessary to develop on the ranch a local water supply for Vista and Escondido. Vista repeatedly relied on the results of Henshaw's sometimes herculean efforts -- and particularly on his 1922 contract with the United States -- when it invested substantial sums for the ranch and its facilities: $4.7 million to purchase them in 1946, $.5 million to develop the well field in 1950 and 1951, $.25 to further develop the well field in 1957, and $8 million to rehabilitate Henshaw Dam in 1980.

As can be imagined, the litigation brought by the Indians and by the United States on their behalf has been tremendously disruptive. For over fifteen years it has caused a steady drain on Vista's resources -- both financial and human -- and has added a layer of complexity to Vista's decision making process. It has prevented Vista from properly maintaining its aging well field on the Warner Ranch, and has made both Vista and Escondido reluctant to make needed improvements to the Escondido Canal. But because of the high stakes and the strength of Vista's position on the river, we have had no choice until now but to litigate. Abandonment of our rights is out of the question -- both morally and economically -- and settlement has been impossible because there is simply not enough local water to divide among Vista, Escondido, and the Indians.

The Indians have looked to the United States and said "You failed to provide our reservations with the water that they need. When you should have been protecting it, you contracted it away to Vista and Escondido." On the other hand, Vista and Escondido have looked to the United States and said "We bargained fairly and honestly with you and contracted with you for these water rights. Since the turn of the century we have relied on our contracts and invested millions in our water facilities. You can't now come and take all of that away." Unfortunately, the fact remains that there is simply not enough local water to go around.

The settlement that S. 2676 will make possible is therefore particularly appropriate because it makes efficient use of existing federal water resources to solve what is essentially a federally created problem by providing the one ingredient that has been missing until now -- more water. We have all worked very hard to put together this settlement. We are all giving up more than we would like, but it is a fair settlement, and one that will allow us to work together instead of fighting. On behalf of Vista Irrigation District, I respectfully urge your favorable consideration of S. 2676.

Thank you.

PREPARED STATEMENT OF THOMAS M. WILSON

A. Introduction

Mr. Chairman and members of the Committee, I am Thomas M. Wilson, the general manager and chief engineer of Vista Irrigation District. Vista owns the 43,000 acre Warner Ranch on which it operates Henshaw Dam and Reservoir and the Warner Well Field. These facilities are presently operated in conjunction with the Escondido Canal and Escondido's Wohlford Dam and Reservoir to provide the communities of Escondido and Vista with their local water supply -- about half of their total water needs. In addition, varying amounts of the naturally occurring flow in the San Luis Rey River are released throughout the year as required to satisfy certain contractual rights of the Mission Indians. The purpose of my testimony is to describe the local water production facilities, briefly describe how they are presently operated primarily for the local entities' benefit, then describe how they will be operated for the benefit of the local entities and the Indians under the settlement which S. 2676 has been introduced to implement.

B. The Local Water Production Facilities

The Warner Ranch is a relatively flat expanse of land which lies at the base of Palomar Mountain in northern San Diego County at an elevation of about 2,700 feet. At its western boundary, the San Luis Rey River, which originates in the mountains above it, plunges into a narrow gorge through which it flows for about 15 miles, passing through the La Jolla Indian Reservation, then flowing into an area of rolling hills near the eastern boundary of the Rincon Indian Reservation. It then continues past the Pauma Reservation, across the Pala Reservation, and finally on to the Pacific Ocean near Oceanside, California.

Henshaw Dam is located at the western boundary of the Warner Ranch and controls the entire flow of the upper San Luis Rey River System. Henshaw Reservoir provides 53,000 acre feet of surface storage. The boundaries of Vista's Warner Ranch are coterminus with those of the 775,000 acre foot Warner Ground Water Basin, which is used to supplement the surface storage. About 9 miles downstream from Henshaw Dam, on the La Jolla Reservation, a small diversion dam diverts the flow of the San Luis Rey River into the Escondido Canal. The canal conveys the water entirely by gravity for 13 miles to Lake Wohlford, which is located in the next watershed, crossing portions of the La Jolla, Rincon, and San Pasqual Reservations on the way. From Lake Wohlford, a 7,000 acre foot reservoir which is owned and operated by Escondido, the water is released to Vista's and Escondido's joint filtration plant, then on to the Vista and Escondido service areas.

C. The Historical Operation of the Local Water System

Historically, Vista and Escondido have been able to produce an average of about 15,000 acre feet of water per year for their own use. We do this by drawing Lake Wohlford down late in the fall toward the end of the dry season. Water originating between Henshaw Dam and the intake to the Escondido Canal is diverted through the canal and used to refill Wohlford during the wet winter season. Henshaw is used to capture the much larger quantities of water, often in the form of flood flows, which originate in the upper part of the basin. During most of the summer, Wohlford is kept nearly full, and stored water is released from Lake Henshaw for use in Escondido and Vista. The Warner Well Field is used to supplement surface storage in Henshaw Reservoir when surface storage alone becomes insufficient to meet Vista's and Escondido's needs.

Although the Indians have a contractual right[1] to the first six cubic feet per second of natural flow in the river, as a practical matter this provides little benefit to them. It amounts to an average of only about 2,500 acre feet per year, and most of it comes during the winter rainy season when it is not needed for irrigation. The river is often dry during the summer irrigation season, and in any event is not a reliable source of water year in and year out to allow the development of the citrus and avocado crops to which the area is best suited.[2] The Indians' problems are compounded by the facts that there are no available lands in the area suitable for the construction of a significant storage reservoir,[3] and although ground water storage is available to serve some of the Indian lands (it is not accessible to all of them), the Indians lack the capital and facilities to fully utilize their water. As a result, the main benefits which the Indians presently derive from the local entities' facilities are a limited amount of low cost power for pumping, flood control, and a relatively steady flow of water through the La Jolla Reservation during the summer which has allowed them to develop a campground and "put and take" fishery.

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[1] Under the contracts which the Indians and the United States are attacking in the litigation.

D. Operation under the Proposed Settlement

The proposed settlement will change this situation considerably for the benefit of the Indians. The central element of the settlement is the equal division of the **developed** water which originates above the intake to the Escondido Canal between the Indians on the one hand and Escondido and Vista on the other.

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[2] Although the contracts also provide the Indians with a limited amount of power for pumping, this still only allows them to develop a portion of their irrigable lands.

[3] In fact, Henshaw is the only storage dam and reservoir on the entire river.

Thus, Escondido and Vista will give the Indians half of the water produced by their local facilities -- an average of about 9,000 acre feet per year. A tremendous benefit given by Vista will be storage rights behind Henshaw Dam, giving the Indians a large amount of the seasonal storage which is so important in the arid west and which they have never before had. The settlement also allows the Indians to deliver water via the Escondido Canal to lands which they would otherwise be unable to economically reach in the upper portions of the La Jolla and Rincon Reservations and on the San Pasqual Reservation.

This alone provides substantial benefits to the Indians, but the settlement goes much farther. One of the main problems which has hampered the development of Indian lands is the lack of the capital necessary to construct the facilities which would make it possible for them to use their water rights. The right to half of the locally developed water would do the Indians no good if they could not afford to construct the facilities that would be necessary to put it to use. To solve this problem, the settlement produces a cash flow for the Indians by requiring the local entities to purchase from the Bands any water that the Bands do not need for use on their reservations for 90% of the local entities' cost for obtaining imported water from the San Diego County Water Authority for the first 7,000 acre feet per year, and 80% of that cost for the remainder.

The final problem which the local water portion of the settlement addresses is that of providing a reliable source of water even during periods of prolonged drought. This is especially true on these reservations where the principal crops will be permanent tree crops -- primarily citrus and avocado -- which must be maintained year in and year out. While Escondido and Vista can rely on their rights to purchase imported water if their local surface and ground water supplies are temporarily depleted, the Indians cannot. Much of the Indians' irrigable land can be served only from the local system. To solve this problem, the settlement guarantees the Indians a minimum of 7,000 acre feet of water per year to the extent it is needed for use on their reservations. If there are dry periods when this results in the Indians getting more than their 50% share of the total local water production, they will be required to balance their account with Escondido and Vista during subsequent wet periods.

E. The Value of Escondido's and Vista's Local Water Contributions

The value of Escondido's and Vista's contributions of local water and facilities can be measured in two ways: in terms of the capital, operation, and maintenance costs to Escondido and Vista of the facilities which they are contributing and in terms of the benefit that the Indians will derive from their use. I will address each of these separately.

1. The Cost to Escondido and Vista

While the Indians will share equally with Escondido and Vista in the benefits derived from Escondido's and Vista's extensive local water production facilities, they will pay only a very small portion of the costs. Escondido and Vista will continue to bear all of the costs of operating, maintaining, and, if necessary, replacing Henshaw Dam, the Escondido Canal, and Wohlford Dam, and Vista will continue to be solely responsible for repaying the principal and interest on the $7,000,000 indebtedness it incurred in 1980 in connection with the modifications to Henshaw Dam required by the State. The Bands will pay all of the costs of covering or undergrounding the Escondido Canal where it crosses portions of the San Pasqual Reservation. And the Bands, Escondido, and Vista will share the costs of operating, maintaining, replacing, and further developing the Warner Well Field facilities: the power costs will be split equally between the Bands on the one hand and Escondido and Vista on the other, while the Bands will pay 40% and Escondido and Vista 60% of the remaining operation, maintenance, replacement, and development costs.

On March 13, 1986, representatives from Escondido and Vista met with staff members from the Office of Management and Budget and discussed the value of the local contribution to the proposed settlement. I have attached to my testimony a copy of a heavily annotated spread sheet entitled "Annual Cost to Escondido, Vista and Indians of Local Contribution for Local Water" which Escondido and Vista presented to OMB at that meeting. This spread sheet shows the derivation of the annual cost to Escondido and Vista of their contributions to the Indians' benefits derived from each of their capital facilities and from the 7,000 acre foot guarantee. The annual cost of the man-made facilities -- Henshaw Dam and Reservoir, the Escondido Canal, Wohlford Dam and Reservoir, and the Warner Well Field -- was determined by first determining the present day replacement cost for each, then amortizing that cost at 9% for 30 years, then adding the annual operation and maintenance costs, and finally multiplying by the proportion attributable to the Indian benefit. The annual costs attributable to the use of the Warner Ground Water Basin and the 7,000 acre foot per year guarantee were determined on the basis of the cost of comparable surface storage provided by Henshaw Reservoir.

The precise derivation of each individual cost element is described in detail in the footnotes to the spread sheet. The net result of this cost based analysis is that under the settlement Escondido and Vista will contribute local water benefits to the Indians worth approximately $3.2 million per year.

2. The Benefits Derived by the Indians

I have also attached to my written testimony a copy of another spread sheet which Escondido and Vista presented to OMB at their March 13 meeting entitled "Value to Bands of Local Water

Assuming On-Reservation Use of Local Water Delivered through Escondido/Vista Facilities Where Return Is Higher than $181.80 per Acre Foot and Sale of Remainder." This spread sheet derives the value to the Indians of using some of the local water which the settlement will provide on their reservations and selling the remainder to Escondido and Vista at 90% of their imported water cost ($181.80 per acre foot).

The determination of how much water would be used on reservation and how much would be sold was based on studies done in connection with the litigation by engineers hired by the Department of the Interior. The dollar return per acre foot of irrigation water applied was determined for each parcel which these experts said was irrigable from the Escondido Canal. It was then assumed that any parcel for which that return was less than the Indians could make by simply selling the water to Escondido and Vista for $181.80 per acre foot would not be irrigated. This resulted in a determination that 5,104 acre feet of water per year would be sold to Escondido and Vista, producing revenues for the Bands of $927,907.

Those parcels on which water could produce a higher return by being used for agriculture were subjected to further analysis. First, the net return or profit which they would produce was computed. Thus, the net agricultural return made possible by the local facilities on the Rincon Reservation is $583,008 per year, and on the San Pasqual Reservation $330,949. Next, the cost of labor on each parcel was added to the net return to the extent that the labor could be performed by reservation Indians who would otherwise be unemployed. This added $666,200 on the Rincon Reservation and $402,048 on the San Pasqual Reservation.

Finally, the $478,900 which the Indians will themselves pay for their local water benefits was deducted from the total. The precise derivation of each individual benefit is described in detail in the footnotes to the spread sheet. The net result of this benefit based analysis is that under the settlement the indians will derive benefits worth approximately $2.4 million from Escondido's and Vista's local water contributions.

Thus, the benefits derived by the Indians from Escondido's and Vista's contribution of their facilities range from $2.4 to $3.2 million per year, depending upon the analytical method used.

F. Conclusion

We have all worked very hard to put together the settlement that lead to S. 2676. All of us -- Escondido, Vista, and the Indians -- are giving up more than we would like, but it is a fair settlement, and one that will allow us to work together instead of fighting. It makes efficient use of Escondido's and Vista's existing facilities to provide benefits to the Indians which could not otherwise be provided. And as was explained by others, it makes up the resulting water shortfall by using existing federal water resources. Thus, the settlement provides a solution to what is essentially a federally created problem at little cost to the federal government.

Thank you.

Value to Bands of Local Water Assuming On-Reservation Use of Local Water Delivered through Escondido/Vista Facilities Where Return Higher than $181.80 per Acre Foot and Sale of Remainder

Component Description	Average Annual Water Amount	Net Cost, Agricultural Return, or Sale or Labor Value to Bands[1]
1. Indian share of local water:		
a. Runoff below Henshaw Dam	2,286 af	
b. Runoff above Henshaw Dam	2,444 af	
c. Warner Wellfield	4,050 af	
Total Local Water to Indians	8,780 af	
2. Agricultural use on the following Reservations:[2]		
a. La Jolla[3]	0 af	$0
b. Rincon[4]		
i. Net Use / Return	2,275 af	583,008[5]
ii. Labor Value		666,200[6]
c. San Pasqual[7]		
i. Net Use / Return	1,401 af	330,949[8]
ii. Labor Value	____	402,048[9]
Reservation Use / Gross Value Subtotal	3,676 af	$1,982,205
3. Sale of Surplus	5,104 af	$927,907[10]
Water Total / Gross Use and Sale Value	8,780 af	$2,910,112
4. Indian share of local system costs:		
a. Cover or underground Escondido Canal		$-146,000[11]
b. Share Warner Wellfield Power Costs (50%)		-174,000[12]
c. Pay 40% of Additional Warner Wellfield Costs		-158,900[13]
Indian Cost Subtotal		$-478,900
Net Amount / Use and Sale Value of Local Contribution	8,780 af	$2,431,212

[1] Cost items represent the Indians' share only and are indicated by minus (-) signs. Sale, labor and use values (benefits) are indicated by positive dollar amounts.

[2] Includes only parcels on the La Jolla, Rincon, and San Pasqual Reservations where water developed and/or delivered by Escondido's and Vista's facilities is the only or most economic supply that could be made available, and where that water results in net agricultural returns of greater than $181.80 per acre foot, the amount Escondido and Vista have agreed to pay for unused Indian water.

[3] None of the La Jolla Reservation's practicably irrigable acreage would yield net agricultural returns in excess of $181.80 per acre foot of applied water.

[4] Includes 939.6 acres.

[5] Net agricultural returns only. Does not include the value to the Band of increased on-Reservation employment opportunities.

[6] Because of the high rate of unemployment on these Reservations and the paucity of jobs in the area, a substantial benefit is gained by making additional jobs available to Reservation Indians. This figure represents the costs of those farm labor and management tasks which could be performed by Band Members as determined by Boyle Engineering, who is serving as an expert consultant for the United States in the District Court litigation. These costs had previously been deducted from gross agricultural returns to reach the Net Return figure set forth above.

A similar analysis was used by George M. Abbott during the hearings before the Federal Power Commissioner (now Federal Energy Regulatory Commission, or "FERC") on Escondido's application for a renewal of its license for Project 176. (See Exhibits I-68 and I-82 through I-94 to those proceedings.) Mr. Abbot was then a General Engineer for the Irrigation Division of the Commissioner's Office of the Bureau of Indian Affairs.

[7] Includes 575.5 acres.

[8] See footnote 5.

[9] See footnote 6.

[10] Computed by taking 90% of the cost to the local entities of their alternative source of imported water (presently $202 per acre foot) for the first 7,000 acre feet per year of water sold, plus 80% of that cost for all additional water sold in the same year. (See Bill paragraph 3(a)(7)(D).)

[11] See Bill paragraph 3(a)(7)(E). Annual cost assuming 9% per annum interest and amortization over 30 years of estimated one time expense of $1,500,000 for replacing portions of the canal on the San Pasqual Reservation with a pipeline. Expense will be lower if canal is covered instead of being placed underground.

[12] See Bill paragraph 3(a)(7)(C)(iii).

[13] See Bill paragraph 3(a)(7)(C)(iii). Total additional operation, maintenance, and replacement costs are estimated to be $117,000 per year, or $46,800 per year for the Bands' 40% share. Annual cost of further developing the Warner Wellfield assumes 9% per annum interest rate and amortization over 30 years of estimated one time expense of $2,880,000.

Annual Cost to Escondido, Vista and Indians of Local Contribution for Local Water

	Cost Component Description	Cost to Escondido and Vista of Their Capital Contribution[2]	Annual Cost to Escondido and Vista of Their Contribution[3]	Amount of Annual Escondido/Vista Cost Allocable to Indian Benefit	Annual Cost Paid by Indians for Own Benefit[4]
1.	Operate, maintain, and, if necessary, replace Henshaw Dam and Reservoir	$24,176,182[5]	$2,403,221[6]	$1,201,611[7]	$0
2.	Escondido Canal				
	a. Operate, maintain, and, if necessary, replace	10,987,939[8]	1,229,526[9]	614,763[10]	0
	b. Cover or underground	0	0	0	146,005[11]
3.	Operate, maintain, and, if necessary, replace Wohlford Dam and Reservoir	2,239,456[12]	237,980[13]	118,990[14]	0
4.	Contribute water development benefits of existing Warner Ranch Wellfield				
	a. Groundwater Basin	10,879,282[15]	1,058,950	529,475[16]	0
	b. Wellfield and related facilities	2,328,000[17]	296,799[18]	68,934[19]	332,931[20]
5.	7,000 AF/Yr Guarantee	13,296,900[21]	1,294,272	647,136[22]	0
Total Local Contribution by Escondido, Vista and Indians for Local Water		$63,907,759	$6,520,748	$3,180,909	$478,936
Grand Total Local Contribution by Escondido, Vista and Indians for Local Water for Indians' Benefit					$3,659,845

[1] These figures represent the parties' contributions toward the production of only their local water, and particularly of the local water that will go to the Indians. The parties will also be paying approximately $375,000 per year to the United States and, it is anticipated, close to $2,000,000 per year to the State of California, the Metropolitan Water District, and the San Diego County Water Authority for the purchase and delivery of the CVP water provided by the Bill.

[2] In essence, by agreeing to replace the local facilities if necessary, Escondido and Vista have agreed to self insure the continued operability of those facilities. If insurance were available -- and it is not -- the amount of the premium would be based largely on the replacement cost of the facilities to be insured, which is the basis for most of the figures in this analysis.

[3] Except as otherwise noted, annual costs are determined by amortizing capital costs over 30 years at nine percent (9%) per annum and adding annual costs where appropriate.

[4] See footnote 3.

[5] Based upon the present day cost of constructing facilities identical to those which now exist, including land acquisition costs based upon the land which is inundated when the reservoir is full to the bottom of the notch in the existing spillway. Although the notched spillway design allows the water in the reservoir to rise above the bottom of the spillway, no allowance was made for the additional cost that would as a practical matter be necessary for flood easements. The full replacement cost was used with no allowance for depreciation since Vista's obligation includes repair and replacement; it is not just a contribution of the existing facilities for their remaining useful life (see Bill subparagraph 3(a)(7)(C)(i)(I)).

[6] Includes operation and maintenance expenses of approximately $30,000 per year. Does not include annual payments of approximately $700,000 on a $7,000,000 bonded indebtedness incurred by Vista in 1978 for modifications to Henshaw Dam, including the construction of a flow retardation structure immediately downstream from the dam. It should be noted, however, that the $7,000,000 principle amount is in effect included in the $24,176,182 construction cost for Henshaw Dam.

[7] Under the Bill and the proposed settlement, the Bands will be entitled to one half of the water developed by Henshaw Dam and Reservoir (see Bill subparagraphs 3(a)(7)(A) and 3(a)(7)(C)(i)(I)). Hence, one half of the annual cost attributable to their operation, maintenance, and replacement is allocable to the Bands' benefit.

[8] Based upon the present day cost of constructing facilities identical to those which now exist, not including land acquisition costs. The full replacement cost was used with no allowance for depreciation since Escondido's and Vista's obligation includes repair and replacement; it is not just a contribution of the existing facilities for their remaining useful life (see Bill subparagraph 3(a)(7)(C)(i)(II)).

[9] Includes operation and maintenance expenses of approximately $160,000 per year.

[10] Under the Bill and the proposed settlement, not only will the Bands be entitled to one half of the water which they and Escondido and Vista develop from above the intake to the Escondido Canal (see Bill subparagraph 3(a)(7)(A)), but in addition Escondido and Vista will be obligated to purchase from the Bands any of that water which the Bands do not need. The Escondido Canal is essential not only for the delivery of a portion of that water to the San Pasqual and portions of the Rincon and La Jolla Reservations, but also for delivery of flood flows to Lake Wohlford for storage, which increases the total system yield, and for delivery of water which the Bands do not need to Escondido and Vista for sale. Hence, one half of the annual cost attributable to the operation, maintenance, and replacement of the Canal is allocable to the Bands' benefit.

[11] The Escondido Canal is presently open for most of its length. It is estimated that it will cost approximately $1,500,000 to cover it or place it underground where it crosses populated or heavily used portions of the San Pasqual Reservation.

[12] Based upon the present day cost of constructing facilities identical to those which now exist, including land acquisition costs based upon the land which is inundated when the reservoir is full to the top of the existing spillway. The full replacement cost was used with no allowance for depreciation since Escondido's obligation includes repair and replacement; it is not just a contribution of the existing facilities for their remaining useful life (see Bill subparagraph 3(a)(7)(C)(i)(III)).

[13] Includes operation and maintenance expenses of approximately $20,000 per year.

[14] Like the Escondido Canal, Lake Wohlford is essential for increasing the total system yield and for delivering water which the Bands do not need to Escondido and Vista for sale. Hence, one half of the annual cost attributable to the operation, maintenance, and replacement of Lake Wohlford Dam and Reservoir is allocable to the Bands' benefit.

[15] Vista owns the entire Warner Ranch, the boundary of which is almost coterminous with that of the Warner Ground Water Basin. The conjunctive use of ground water storage increases by approximately 45 percent the average water supply that would be available from surface storage only. Accordingly, the value attributed to the use of the Warner Ground Water Basin has been taken as 45 percent of the replacement cost of Henshaw Dam and Reservoir. (See Item 5 and footnote 21 re additional value derived from the Groundwater Basin which is allocated to Escondido's and Vista's 7,000 acre foot per year guarantee to the Indians.)

By way of comparison, on the basis of recent purchases and offers to purchase portions of the Warner Ranch (or easements across them) by the United States and the State of California, the value of the entire Ranch is between $60,000,000 and $150,000,000.

[16] Under the Bill and the proposed settlement, the Bands will be entitled to one half of the water developed by the Warner Ranch Wellfield (see Bill subparagraphs 3(a)(7)(A) and 3(a)(7)(C)(ii)). Hence, one half of the annual cost attributable to the value of the Warner Groundwater Basin is allocable to the Bands' benefit.

[17] New facilities will have to be constructed for optimum utilization of the wellfield. The present day cost of constructing these new facilities is approximately $1,600,000 for new wells and $1,280,000 for manifold system, canals, siphons, and bridges. Vista and Escondido will pay 60% of this cost ($1,728,000). In addition, Vista will contribute existing wells having a present day actual value (their replacement value would be considerably higher) of approximately $600,000. Thus, the value of Vista's and Escondido's contribution is $2,328,000. It should be noted that the Indians have agreed to pay 40% of the capital, operation, and maintenance costs and their proportionate share (50%) of the power costs associated with the wellfield; the total capital cost of the wellfield is $3,480,000.

[18] Includes $70,200 as Vista's and Escondido's agreed contribution to operation and maintenance expenses totaling approximately $117,000 per year (exclusive of the cost of power for pumping, which will be borne by each party in proportion to the amount of pumped water it receives).

[19] Under the Bill and the proposed settlement, the Bands will be entitled to one half of the water developed by the Warner Ranch Wellfield (see Bill subparagraphs 3(a)(7)(A) and 3(a)(7)(C)(ii)). However, they will pay only 40 percent of the nonpower operation, maintenance, and replacement costs for the wellfield, with Escondido and Vista paying the remaining 60% (see Bill subparagraph 3(a)(7)(C)(ii)). Hence, one sixth of Escondido's and Vista's annual costs attributable to Warner Wellfield operation and maintenance ($70,200 / 6 = $11,700 -- see footnote 18), one sixth of Escondido's and Vista's annual costs attributable to construction of new facilities on the Warner Wellfield ($1,728,000 capital cost amortized to $168,197 / 6 = $28,033 -- see footnotes 17 and 3) and one half of the amortized value of Vista's existing Warner Wellfield facilities ($600,000 amortized to $58,402 / 2 = $29,201 -- see footnotes 17 and 3), or $68,934 is paid by Escondido and Vista solely for the Bands' benefit.

[20] See footnote 17. The Indians' 40% share of the capital cost for construction of new wellfield facilities is $1,152,000, or $112,131 per year (see footnote 3). In addition, the Indians' agreed share (40%) of annual operation and maintenance costs exclusive of power ($117,000) comes to $46,800, and their

(footnote continued)

(footnote continued from previous page)
proportionate share (50%) of estimated average annual energy costs for pumping ($348,000) comes to $174,000, for a total annual contribution of $332,931 for their own benefit (50% of the local water).

[21] As part of the settlement, Escondido and Vista have guaranteed the Indians a minimum of 7,000 acre feet of local water per year to the extent they need it for use on their Reservations. This guarantee is essential to the successful development of the Reservation acreage that will be irrigated from the Canal, for although Escondido and Vista have an alternate source of water for their service areas (imported water from the Metropolitan Water District and the San Diego County Water Authority), the Indians do not have an alternative source for these portions of the La Jolla, Rincon, and San Pasqual Reservations. If the local water system were operated to maximize the average yield without the use of groundwater storage, there would be years during extended droughts when no water would be produced. While Escondido's and Vista's alternate source of water would make such operation feasible for them, it would not be feasible for the Indians because the permanent crops on which they rely would die in the absence of an alternative source of water during droughts. The Indians would therefore have to operate the system on a firm yield basis, which would guarantee only 3,500 acre feet per year from the entire system using surface storage only. Augmenting surface storage with Warner Groundwater Basin storage increases the firm yield of the system from above Henshaw Dam by 270% from 3,500 acre feet per year to 13,100 acre feet per year.

As a practical matter, the system will no doubt be operated to maximize the average yield except as necessary to meet Escondido's and Vista's guarantee of at least 7,000 acre feet per year of water available to the Indians for on-Reservation use. Nevertheless, from the above analysis it can be seen that 7,000 acre feet per year is double the amount that Escondido and Vista would be physically able to guarantee the Indians in the absence of the Warner Groundwater Basin, even if the system were operated on a firm yield basis (which would be far from economical).

Thus, the combined effect of the groundwater basin and the guarantee is to increase the reliable supply of water available to the Indians by at least 100% over what would be available from surface storage alone. If the groundwater basin is valued at 45% of the replacement cost for Henshaw Dam because of the increase in the average system yield which it makes possible (see footnote 15), it follows that the 7,000 acre foot per year guarantee could be valued at 35% of the replacement cost of Henshaw Dam ($13,296,900) to reflect the 100% increase in the reliable supply to the Reservations that the use of the groundwater basin and the guarantee together yield.

By way of comparison, on the basis of recent purchases and offers to purchase portions of the Warner Ranch (or easements across them) by the United States and the State of California, the value of the entire Ranch is between $60,000,000 and $150,000,000.

[22] Although 100% of the value of the guarantee inures to the benefit of the Indians, Escondido and Vista also benefit by the wellfield firming up their supply.

PREPARED STATEMENT OF PAUL D. ENGSTRAND

I am Paul D. Engstrand and have served as chief trial counsel for the City of Escondido and the Escondido Mutual Water Company in the San Luis Rey water rights litigation.

In 1968, our firm was engaged by the City to represent them in seeking to acquire the water system of the Mutual Water Company. After commencement of the eminent domain action, settlement negotiations culminated in an agreement for purchase and sale. It contemplated transfer of all assets to City including the Federal Power Commission license for Project 176. The license had been issued in 1924 and would expire in 1974. The City was to pay a cash consideration of $6.25 million subject to specified conditions--one of which was transfer of the FPC license. No one, at that time, expected any problems in securing the consent of the Commission to the transfer. The people of Escondido had approved a $9.75 million water revenue bond issue in 1963 to finance the program, which included plans for integration and improvement of the two systems. However, in August 1969, certain Mission Indian Bands filed suit against the City and Mutual and successfully enjoined implementation of the agreement.

Rather than completely postponing a solution to the mounting requirements for construction of improvements and expansion of the water supply and distribution systems serving Escondido valley, temporary solutions have been achieved.

In June 1970, the City made a tender offer to purchase all of the outstanding shares of Mutual. After several hearings the Federal District Court allowed the tender offer to proceed subject to certain conditions, including the condition that all money due to Mutual or its shareholders would be impounded until the litigation had been resolved. Most of the shareholders accepted the tender offer which had been approved by the Board of Mutual. By acceptance of the tender offer, the tendering shareholders granted the City voting proxies for their shares. In return the City agreed to pay the shareholders "semi-annual payments" which were impounded by the Court. The payments from the City have been invested and as of June 30, 1986, this fund exceeds $10 million.

The City has used the proxies to elect five of the seven members of the Mutual Board of Directors and has accomplished substantial physical integration of the two water systems. The City, in effect, operates the water systems subject to its obligations under the 1970 tender offer to the shareholders of Mutual.

After the tender offer was accepted, Mutual and City engaged our firm to represent them jointly in their common effort to assert and preserve their rights to the local water resource from the San Luis Rey river. I shall briefly review some of the highlights of this effort.

The genesis for Escondido's water rights occured in February of 1891, when the Irrigation District made several water filings under state law on the San Luis Rey river, appropriating water for use in the Escondido community. In June 1894, after several months of negotiations with federal government officials, a contract was entered into between the Irrigation District and the Potrero (La Jolla) Band which authorized the District to build a canal across the La Jolla Reservation and divert water from the San Luis Rey river. In October 1894 the contract was approved by the Commissioner of Indian Affairs, and in November 1894 by the Secretary of Interior.

In 1894 the District issued over $350,000 in bonds and constructed diversion works, the Escondido Canal, a reservoir in Bear Valley (now called Lake Wohlford), and a distribution system to serve the Escondido community.

Adverse economic conditions were compounded in 1903 by a fire which destroyed much of the upper canal. In 1905, the Irrigation District was dissolved in state court proceedings and all of its assets, including its water rights and rights of way, were acquired by the Escondido Mutual Water Company.

In 1908, the Secretary of the Interior issued a right of way permit to Mutual confirming its canal rights of way across all government and Indian lands including the San Pasqual, Rincon and La Jolla Reservations.

In 1911, William G. Henshaw acquired Warner's Ranch which consisted of some 43,000 acres of land on the upper San Luis Rey river. The ownership of this land under Mexican grants had been confirmed against the claims of the Indians by the United States Supreme Court in Barker v. Harvey (1901) 181 U.S. 481.

Henshaw planned construct a huge reservoir on the upper San Luis Rey river where the river crossed the western boundary of the ranch. After filing various notices of appropriation, he set about getting agreement from all downstream riparian owners and appropriators for the construction of the reservoir. Since Mutual was the largest appropriator on the San Luis Rey river, Henshaw first, in June 1912, made an agreement with Mutual whereby Mutual consented to the construction of the dam in return for certain water guarantees.

In 1914, while Henshaw was continuing to gain consents, from downstream riparian owners, Mutual entered into a new contract with the United States on behalf of the Rincon Band. In return for certain guarantees of water and power to the Rincon Indians the new contract permitted Mutual to erect and maintain a hydroelectric power plant on the Rincon reservation and granted Mutual a right of way across the Rincon and San Pasqual reservations for power transmission and road facilities. The contract was signed on behalf of the United States by the Assistant Secretary of the Interior. In reliance upon that contract, Mutual constructed a power plant at Rincon and built a transmission line which linked that plant with a similar facility which it constructed on its own land at Bear Valley. These two facilities supplied the first electrical power to the Rincon Band and the Escondido community.

In June 1920 while applications for additional permits were pending before the Secretary of the Interior, the Federal Water Power Act was passed. In February 1921 the applications were transferred to the Federal Power Commission. In June 1924, the Commission granted Mutual a 50 year license for Project No. 176 which included the Escondido Canal, Lake Wohlford, the two power plants and all needed transmission line, road and telephone rights of way across the federal government lands including the La Jolla, Rincon and San Pasqual reservations.

Meanwhile, Henshaw, having gained permission from Mutual and other downstream riparians and appropriators, started negotiations with the United States to obtain permission to build the dam. In 1922 a contract was entered into between Henshaw and the United States on behalf of the Indians of the Pala and Rincon reservations. In return for Henshaw agreeing to supply flood control protection to the Indians and other water guarantees to the Rincon and Pala reservations, the Secretary of Interior in behalf of the Indians agreed to impose no objections to the construction, maintenance and use of the dam and reservoir and the diversion of water which would be impounded in those dams.

In reliance upon that contract, in 1922, Henshaw and his successor the San Diego County Water Company commenced construction of Henshaw Dam and reservoir, the largest reservoir in San Diego County. In 1922 and 1924 the Water Company entered into separate contracts with the Escondido Mutual Water Company and Vista Irrigation District (which served the nearby community of Vista, California) to sell them the water impounded in Henshaw dam. The plan was for the water to be released from the Dam into the San Luis Rivr, to flow down the river until it reached the diversion point of the Escondido Canal, transported by the Canal to Lake Wohlford, from where it would be either delivered to Escondido or transported via the Vista Flume to the Vista community.

In 1946 Vista Irrigation District acquired all shares of San Diego County Water Company and thus succeeded to the ownership of Lake Henshaw the lands of Warner's Ranch, and all other rights developed by the Henshaw interests on the San Luis Rey river.

In the 1950s, as a result of drought conditions, Mutual and Vista Irrigation District entered into a series of pumping agreements whereby Vista agreed to pump from its Warner's Ranch groundwater basin and deliver certain amounts to Mutual as well as to Vista. In addition, both the Escondido and Vista communities secured rights to receive imported water from the Metropolitan Water District of Southern California and the San Diego County Water Authority.

The City of Escondido joined in 1950 and the Rincon del Diablo and Bueno Colorado Municipal Water Districts joined MWD and SDCWA in 1954. Rincon del Diablo includes the Escondido valley not included within the City and Bueno Colorado includes VID.

In June 1969, the Rincon and La Jolla Bands filed an action in federal district court (Rincon Band et al. v. Escondido Mutual Water Company, et al., Southern District of California, Civil No. 69-217-S) alleging that Mutual's water and right of way contracts, permits and licenses were void; seeking an injunction to prevent Mutual from taking additional water from the San Luis Rey river, and seeking millions of dollars in past damages.

In July 1972, the United States filed a new action on behalf of the Rincon, La Jolla, San Pasqual and Pala Bands against both Mutual and Vista seeking damages for trespass and contractual relief (United States v. Escondido Mutual Water Company, et al., U.S. District Court, Southern District of California, No. 72-271-S). In December 1972, the District Court consolidated that suit with the prior suit (No. 69-217-5) and with a similar suit against Vista Irrigation District (Rincon Band et al. v. Vista Irrigation District, U.S. District Court, Southern District of California,No. 72-276-S).

Since the 1970s, there have been several hearings, interim orders and discovery proceedings. In early 1985 trial was set for November 1985, but the date was vacated, by stipulation, to allow time for the settlement efforts which culminated in the legislation proposed by S. 2676.

Meanwhile, in 1969 the Bands also had filed claims before the Federal Power Commission seeking to block the proposed transfer of the license for Project 176 from Mutual to the City of Escondido. In 1971 Mutual also applied to the Federal Power Commission for a new 50 year license to operate Project No. 176. The Bands and Interior intervened and opposed. The Bands sought a nonpower license and Interior recommended federal takeover, or alternatively supported the Bands' application.

The hearings before the Commission lasted 53 days and involved thousands of pages of records and transcripts, and dozens of witnesses. In 1979 the Federal Energy Regulation Commission issued its decision [Escondido Mutual Water Co., Project 176, Opinion 36, 6 FERC ¶61,189] ruling it had jurisdiction over Project No. 176 and that a new license should issue to Escondido and Vista but subject to increased annual charges for the use of Indian lands and additional conditions. On rehearing, the Commission modified its earlier opinion in some respects [Escondido Mutual Water Co., Project 176, Opinion 36-A, 9 FERC ¶61241]. All parties except the Commission sought review in the Court of Appeals.

In 1982 the Ninth Circuit issued a decision [Escondido Mutual Water Co. v. Federal Energy Regulatory Commission, 692 F.2d 1223 (9th Cir. 1982)] affirming the Commission's jurisdiction but holding that in addition to securing a federal power license, Mutual, City and Vista were required to obtain rights of way for the Project from the Indians and that the Commission must accept such reasonable conditions that Interior might assert for the Indians' benefit. All parties petitioned for a rehearing and in 1983 the Ninth Circuit denied rehearing, with one Circuit judge dissenting. [Escondido Mutual Water Co. v. Federal Energy Regulatory Comm'n., 701 F.2d 826 (9th Cir. 1983).]

The United States Supreme Court granted certiorari and issued a unanimous decision reversing in part and affirming in-part. [Escondido Mutual Water Co. v. La Jolla Band of Mission Indians (1984) 466 U.S. 765] It reversed the Ninth Circuit ruling that the Escondido and Vista had to obtain rights of way from the Bands, but affirmed the ruling that the Commission had to include license conditions proposed by Interior. The Indians' petition for rehearing before the Supreme Court was denied [Escondido Mutual Water Co. v. La Jolla Band of Mission Indians (1984) 467 U.S. 1267] and the Ninth Circuit remanded that proceeding back to the Commission for further proceedings. [Escondido Mutual Water Co. v. Federal Energy Regulatory Comm'n (9th Cir. 1984) 743 F.2d 1321].

The Commission has not yet scheduled additional hearings. It is estimated that the further proceedings before the Commission and appeals would require a minimum of an additional five years.

Settlement

Over the years there have been numerous attempts to settle this dispute. In 1980 one attempt even led to the introduction of a settlement bill by Senator Cranston. [S. 1507 (96th Cong. 1st Sess.)] and hearings before the Select Committee on Indian Affairs (Hearing on S. 1507, 96th Cong., 2d Sess., March 6, 1980). Unfortunately, that attempt and all other previous settlement attempts failed because the parties were unable to reach agreement.

In late 1984 following the Supreme Court and Ninth Circuit remand of the Project 176 proceedings and with the November 1985 District Court trial date approaching, the parties once again commenced negotiations. They have been aided by Congressman Ron Packard and his staff who formed the San Luis Rey Settlement Task Force. The Task Force consisted of representatives from the Department of Interior and Justice as well as the parties. It met several times and in June 1985, the participants reached an agreement in principle. The basis for the agreement was that if an economic source of supplemental imported water could be found, the parties would agree to divide the local water 50-50, with the local entities providing most of the cost of developing the local water. (The contributions of both the Local Entities and the Bands to this settlement are discussed in the attached Memorandum which was prepared for a presentation to the Office of Management and Budget.)

One of the first suggestions for an alternative supply of imported water was from the Colorado river. The problem with that approach is that all of the water in the Colorado river had already been allocated to various states [Arizona v. California (1963) 373 U.S. 546, 551] and all of California's share had been contracted for by public agencies. Thus, there is nothing that Congress could legally allocate from the Colorado to the Mission Indian Bands. [See the Hoover Dam Documents, Wilbur and Ely (1948) at 108.] In addition, even if there were uncontracted for surplus water available, the only facility available to transport Colorado River water from the river is the Metropolitan Water District's (MWD's) Colorado Aqueduct. In the past whenever there has been any surplus in the Colorado MWD has used the complete capacity of its aqueduct system to divert the water for its own needs. Finally, it takes energy to deliver the water from the Colorado River and it is believed that all available federal power in the area had already been contracted to MWD and other public entities.

It was at this point that the concept of obtaining water from the Central Valley Project was raised. In connection with this, Mr. John Teerink, a former Director of the California Department of Water Resources, and extremely knowledgeable about the inner workings between the State Water Project and Central Valley Project, was contacted for assistance. As is explained in his testimony, he has investigated the Central Valley Project and determined that (1) there was now and would probably be for the foreseeable future a substantial amount of surplus water available from the Central Valley Project water; (2) there was now and would be for the foreseeable future sufficient capacity in the State Aqueduct and MWD's aqueducts to transport for this water; and (3) there was now and would probably be for the foreseeable future sufficient surplus power generated by the CVP to permit the water to be pumped over the Tehachapis without cost to existing project or preference customers of the CVP. Based upon his work, the parties believe that if this legislation is enacted, water can be purchased from the CVP, power purchased from CVP and wheeling charges paid to the various entities, at amounts which would make it economically feasible to have this water delivered to San Diego County.

As explained in the attached OMB Memorandum, the use of this CVP water and power makes it possible for the federal government to participate in the settlement at a modest cost.

Thus, a unique opportunity now exists. If this bill is passed, the local entities, the Indians and the federal government will be spared another decade of litigation. The proposed settlement will make it possible for the Bands as well as the Escondido and Vista communities to share the benefits of the local water by supplementing it with imported water. Further, the federal government will have achieved the settlement of seriously controverted claims between successors of native Americans to whom it has assumed major trust responsibilities and successors to the pioneers who developed the Project 176 facilities relying upon the integrity of contracts made by U.S. government officials.

MEMORANDUM

To: Nancy Mason, Administrative Assistant to
Honorable Ron Packard

From: Don Lincoln/ Kent Foster

Date: March 11, 1986

Re: Presentation to OMB Re: San Luis Rey Indian
Water Rights Settlement Act

BACKGROUND:

The Office of Management and Budget ("OMB") has requested that it be provided with figures which will detail: (1) the "cost" of the San Luis Rey Indian Water Rights Settlement Act ("Settlement") to the federal government; (2) the "local contribution" to the Settlement; and (3) the "benefit" to the Indians from the Settlement.

I. THE COST TO THE FEDERAL GOVERNMENT (FEDERAL CONTRIBUTION)

The Settlement requires the federal government to deliver 22,700 acre feet of Central Valley Project ("CVP") water to a point in the San Diego Aqueduct in the vicinity of the Bands' Reservations (see March 11, 1986 Draft Bill ("Draft Bill"), Sec. 5(a)(1)). Since the CVP already produces approximately 1 million acre feet more water than is presently under contract, the Settlement does not require the construction of any new federal facilities (Draft Bill, Sec. 5(a)(3)(A)). It does not require the federal government to condemn or acquire any non-federal facilities (Draft Bill, Sec. 5(a)(3)(B)) or the lands of any Indian owner or allottee (Draft Bill, Sec. 8(b)). It does not require the federal government to pay any costs associated with conveying the water through nonfederal facilities (Draft Bill, Sec. 5(a)(2)(B)). Nor does it require the federal government to pay any of the costs associated with conveying the water from the point of delivery to the Bands' Reservations (Draft Bill, Sec. 5(a)(2)(B)).

The only "costs" to or "contributions" by the federal government are in the form of foregone revenues.

A. Foregone Water Revenues

If the 22,700 acre feet of water delivered to the Indians under the Settlement were instead delivered at the Sacramento-San Joaquin Delta to another new CVP project use irrigation water customer under current rates, the federal government would receive $42,676.00 ($1.88 per acre foot) for the capital cost component plus $35,639.00 ($1.57 per acre foot) for the operation and maintenance ("O&M") component for a total of $78,315.00. Under the Settlement, the Indians pay only the O&M component of $35,639.00 (Draft Bill, Sec. 5(a)(2)(A)). Since the capital component is made nonreimburseable (Draft Bill, Sec. 5(a)(2)(A)), the difference ($42,676) becomes a federal "foregone revenue" or contribution.

B. Foregone Power Revenues

Evaluation of the "federal contribution" associated with the power needed to deliver the water is more complex. The Settlement requires the Secretary of the Interior to use CVP "project use" power to deliver the 22,700 acre feet from the Sacramento-San Joaquin Delta to the Indian Water Authority in San Diego County (Draft Bill, Sec. 5(b)(1)). It takes a net amount of 3,200 kilowatt hours ("kWh") of energy to deliver each acre foot of water from the Delta to San Diego County. The delivery of 22,700 acre feet of water therefore requires approximately 72,640,000 kWh of energy.

Power generated by the CVP can be placed in three categories. In order of priority, they are "station service," "project use," and "commercial firm" power. "Station service" power is used to run the powerplants and switchyards and is deducted from gross generation to obtain the net energy available from the project. "Project use" power is power that is used to deliver first lift irrigation water to project irrigation customers and for other specifically authorized purposes; it has the first priority.

The project was planned to generate more power than is needed for project uses so that the federal government could use the revenues from the sale of this power to repay the capital investment in the power facilities (plus interest), annual power operation and maintenance costs, and a portion of the investment in irrigation facilities that is beyond the ability of the irrigators to repay. Accordingly, the federal government has entered into long term power sales contracts with various federal and state agencies and public utilities who have a "preference" entitlement to "commercial firm" federal power at rates periodically adjusted to provide sufficient revenue to recover the above mentioned costs. At some times during the year, more power is generated than is needed, after meeting project use requirements, for commercial firm contracts. This excess is deposited in a bank account ("banked") with the Pacific Gas & Electric Company ("PG&E") for withdrawal during some future period of shortage.

In addition to the power generated by the CVP facilities, the federal government also purchases power from other sources. To the extent that this non-CVP-generated power is not needed for either project use or commercial firm power customers, it also may be banked with PG&E. The settlement recognizes this fact and authorizes the Secretary of the Interior to obtain additional power from other sources when there is inadequate CVP generated project use power. (Draft Bill, Sec. 5(b)(1))

PG&E "banks" this excess power under an agreement known as "Contract No. 14-06-200-2948A" and sells it back to the federal government during other times of the year when the CVP is either not generating enough power to satisfy both its project use and other commercial firm power demands, or cannot buy cheaper power to meet those needs from other sources. It was originally thought that the power banked and the power withdrawn under Contract 2948A would, on average, balance. However, in practice, much more power has been banked than has been withdrawn, and there is presently enough power in the bank account (from which withdrawals are made on a first in first out basis) to satisfy all anticipated needs until the last of the commercial firm power contracts expires (at the end of the year 2004).

The existence of this "banked" power and the fact that it is being annually increased provides the source for the energy needed for the settlement. If 72,640,000 kWh annually is used to transport the 22,700 acre feet of water instead of being "banked," there should be no effect on existing project use customers, or commercial firm power customers receiving power under existing contracts. (Draft Bill, Sec. 5(b)(3), (4)). The only effect will be on gross federal power revenues, which will decrease.

In order to determine what these foregone power revenues will be, it is necessary to look at two alternative uses for the 72,640,000 kWh.

1. Foregone power revenues when compared with a regular project use customer

If the 72,640,000 kWh delivered to the Indians under the Settlement were instead utilized by another new CVP project use irrigation water customer the federal government would receive $140,922 (1.94 mills per kWh) for the capital cost component plus $339,229 (4.67 mills per kWh) for the O&M component for a total of $558,466. Under the Settlement, the Indians pay only the O&M component or $339,229. (Draft Bill, Sec. 5(b)(2).) Since the capital components are made nonreimburseable (Draft Bill, Sec. 5(b)(2)), the difference ($140,922) becomes an annual federal "foregone revenue" or contribution.

2. Foregone power revenue when compared with power "banked" with PG&E

If the 72,640,000 kWh were instead "banked" with PG&E there would be a different result.

As pointed out above, the Indians will pay only the O&M portion (4.67 mills per kWh) for this energy or $339,229. In contrast, PG&E is currently paying 36.16 mills per kWh (i.e., the commercial firm power rate) for the CVP-generated power which it "banks" and a varying amount (ranging from 11 to 40 mills) for the non-CVP-generated power which it "banks." The resulting average rate which PG&E pays is 35 mills per kWh. The sale of 72,640,000 kWh to PG&E at this 35 mill rate would generate $2,542,000. The difference between what the Indians would pay and what PG&E would pay would be federal foregone power revenues of $2,203,171. Since if this power were used to transport the Indians' water they would also be paying the irrigation water O&M charges of $35,639, the net federal foregone revenue or contribution of not "banking" this power with PG&E would be $2,167,532.

Table 1 compares the payments made under the Settlement bill with normal project use revenues and revenues from PG&E. Depending on which comparison is used, the total federal foregone revenue or contribution is either $183,598 or $2,167,532 annually.

[If one capitalizes these amounts at 9% forever (e.g., 100 years), th translate into a federal capital contribution of either $2,039,609 or $24,079,333.]

TABLE 1

COMPARISON OF PAYMENTS UNDER SETTLEMENT BILL
WITH NORMAL PROJECT USE REVENUES AND
REVENUES FROM PG&E

	HR 3958		PROJECT USE	PG&E
WATER REVENUES				
Capital 1/	$ -0-	2/	$ 42,676	$ -0-
O&M 3/	$ 35,639	4/	$ 35,639	$ -0-
Subtotal	$ 35,639		$ 78,315	$ -0-
POWER REVENUES				
Capital 5/	$ -0-	6/	$ 140,922	$ -0-
O&M 7/	$ 339,229	8/	$ 339,229	$ -0-
PG&E 9/	$ -0-		$ -0-	$ 2,542,400
Subtotal	$ 339,229		$ 480,151	$ 2,542,400
TOTAL WATER & POWER REVENUES	$ 374,868		$ 558,466	$ 2,542,400
[Deficit From Project Use Water Revenues]			$[42,676]	
[Deficit From Project Use Power Revenues]			$[140,922]	
[Deficit From PG&E Power Revenues]				$[2,203,171]
[Total Deficit From Project Use Revenues]			$[183,598]	
[Total Net Deficit From PG&E Revenues] 10/				$[2,167,532]

TABLE 1 NOTES

1. The capital cost component of CVP irrigation water charge to a new customer at the Sacramento-San Joaquin Delta is $1.88 per acre foot per year or $42,676.00 for 22,700 acre feet.

2. Draft Bill, Sec. 5(a)(2)(A) provides that the Indians do not pay these capital costs and they shall be nonreimburseable.

3. The O&M component of CVP irrigation water charge to a new customer at the Sacramento-San Joaquin Delta is $1.57 per acre foot per year or $35,639.00 for 22,700 acre feet.

4. Draft Bill, Sec. 5(a)(2)(A) requires the Indians to pay these O&M charges.

5. The capital component of CVP irrigation project use power is 1.94 mills per kWh per year or $140,922 for the 72,640,000 kWh needed.

6. Draft Bill, Sec. 5(b)(2) provides that the Indians do not pay these capital costs and they shall be nonreimburseable.

7. The O&M component of CVP irrigation project use power is 4.67 mills per kWh per year or $339,229 for the 72,640,000 kWh needed.

8. Draft Bill, Sec. 5(b)(2) requires the Indians to pay these O&M charges.

9. PG&E currently pays the commercial firm power rate of 36.16 mills per kWh for energy produced by CVP facilities which is "banked" with it. Other "banked" power (primarily received from the northwest) lowers the overall average rate for "banked" power to 35 mills per kWh per year or $2,542,400 for the 72,640,000 kWh needed.

10. The power deficit of $2,203,171 is reduced by the Indians' O&M water payment of $35,639 to obtain the net deficit from PG&E revenues.

II. THE COST TO THE LOCAL ENTITIES AND THE BANDS (LOCAL CONTRIBUTION)

A. Contribution of Local Entities

The Settlement will require the City of Escondido, the Escondido Mutual Water Company, and Vista Irrigation District ("Local Entities") to operate, maintain and replace the water development, conveyance and storage benefits made possible by Henshaw Dam and Reservoir, the Escondido Canal and Wohlford Dam and Reservoir (Draft Bill, Sec. 3(a)(7)(C)(i)) and the water development benefits of the existing Warner Ranch Wellfield and related facilities (Draft Bill, Sec. 3(a)(7)(C)(ii)). In addition, the Local Entities will pay 60% of the cost of constructing new facilities and of maintaining and replacing all facilities necessary for the optimum utilization of the Warner Ranch Wellfield. (Draft Bill, Sec. 3(a)(7)(C)(iii)).

The Local Entities have also agreed to share all waters developed by their facilities 50:50 with the Indians (Draft Bill, Sec. 3(a)(7)(A)); to use their facilities to guarantee that the Bands receive a minimum of 7,000 acre feet of water per year for use on their reservations (Draft Bill, Sec. 3(a)(7)(B)); and to purchase the Indians' share of the local water that is surplus to their needs at 90% of the Local Entities' cost of obtaining alternate water for the first 7,000 acre feet and 80% of such cost for the remainder (Draft Bill, Sec. 3(a)(7)(D)).

Since much of the Local Entities' contribution involves preexisting facilities, the first step in valuing these contributions was to value these facilities. Engineering consultants prepared estimates of the cost of reconstructing the Local Entities' facilities using price levels prevailing at the end of 1985. No allowances for depreciation were subtracted because the Local Entities are assuming the obligation to maintain the facilities, including their periodic repair and replacement as necessary. (The contributions consist of the facilities in perpetuity, not just for the remaining useful life of the structures which now exist.) These capital contributions were then amortized over a 30-year period at a 9% rate (this period and rate approximate what the Local Entities would have to pay for bonded indebtedness) to obtain the value of the annual capital contribution. To this figure was added the annual O&M costs for the facilities, again at 1985 price levels. The sum of these two amounts is the total annual cost for the Local Entities.

To determine the amount allocable to Indian benefit, the result was divided by two because the Indians receive half of the water developed by these facilities.

The value of Henshaw Dam and Reservoir, the Escondido Canal, and Wohlford Dam and Reservoir were calculated in this manner. (Since these values involve complete reconstruction, they do not take into account any payments the Local Entities are currently making. For example, Vista is paying approximately $700,000 annually on a $7,000,000 bonded indebtedness incurred in 1978 for modifications to Henshaw Dam).

The valuation of the Warner Ranch Ground Water Basin involved a slightly different procedure. The full development of the water supply to be shared by the Indians and the Local Entities requires the usage of the Warner Ground Water Basin above Lake Henshaw. In effect, the Warner Ground Water Basin functions as a substitute for additional surface storage capacity at Henshaw Reservoir. Optimum operation of the San Luis Rey River system requires use of approximately 150,000 acre feet of groundwater storage (compared to the approximately 50,000 acre feet of surface water storage provided at Lake Henshaw). The conjunctive use of groundwater storage increases the average water supply from Lake Henshaw by approximately 45% over that which would be available without use of groundwater storage. Accordingly, the value to be attributed to the use of the groundwater basin was estimated at 45% of the cost of Henshaw Dam. The 45% value was then amortized to obtain an annual amount and since the Indians receive half of the water produced from the groundwater basin, half of the annual amount was then credited to the Indians.

The valuation of the 7000 acre guarantee requires further analysis. The Local Entities have an alternate source of water for their service areas (imported water from the Metropolitan Water District of Southern California (MWD) and the San Diego

County Water Authority (SDCWA)), however, the Indians do not have such an alternative source. If the local water system were operated to maximize the average yield without the use of groundwater storage, there would be years during extended droughts when no water would be produced. While the Local Entities alternate source of water would make such operation feasible for them, it would not be feasible for the Indians because the permanent crops on which they rely would die in the absence of an alternative source of water during droughts. The Indians would therefore have to operate the system on a firm yield basis, which using surface storage only would guarantee only 3,500 acre feet per year from the entire system.

It is only through the conjunctive use of the groundwater basin with the surface storage that 7,000 acre feet per year of water can be guaranteed to the Indians for on-Reservation use. Thus, the combined effect of the groundwater basin and the guarantee is to increase the reliable supply of water available to the Indians by at least 100% over what would be available from surface storage alone. If the groundwater basin is valued at 45% of the replacement cost for Henshaw Dam because of the increase in the average system yield which it makes possible, it follows that the 7,000 acre foot per year guarantee should be valued at 55% of the replacement cost of Henshaw Dam ($13,300,000) to reflect the 100% increase in the reliable supply to the Reservations that the use of the groundwater basin and the guarantee together yield. This would increase the annual cost to the Local Entities of their contribution by $1,294,574 and the annual amount allocable to Indian benefit by at least half that amount or $647,287. (Since the 7000 acre foot guarantee is for the Indians' benefit, arguably the entire amount ($1,294,574) should be allocated to the Indian benefit.)

In addition, in order to fully utilize the Warner Ranch groundwater basin and to meet the 7,000 acre foot guarantee it will be necessary to improve and redevelop the wellfield. The value of the existing wellfield which can be utilized in this redeveloped wellfield is $600,000. That amount is then amortized and since the Indians will receive half of the water produced by these wells, half of the annual amount is then credited to the Indians.

The total capital cost of the additional wellfield redevelopment is estimated at $2,900,000, of which the Local Entities will pay 60% or $1,740,000. This amount is then amortized to obtain an annual amount of $169,365. Since the Indians will pay 40% of this cost, only 10/60ths (1/6) of the Local Entities' payment of $169,365 ($28,228) is allocable to Indian benefit.

The total O&M of the redeveloped wellfield is estimated to be $465,000, of this the Local Entities will pay 50% of the power cost of $348,000 or $174,000, but since the Indians will also be paying 50%, none of this power payment is allocable to Indian benefits. The Local Entities will pay 60% of the other O&M costs of $117,000 or $70,200. Since the Indians will pay 40% of this cost only 10/60 of the $70,200 or $11,700 is allocable to Indian benefit.

Finally, the Local Entities will also contribute to the settlement by paying the Indians their costs in delivering 6,000 acre feet of CVP water. This cost is estimated at $100 per acre foot. However, since the Indians do not sell this water at profit, no amount of this $600,000 Local Entities' cost is allocable to Indian benefit.

As shown on Table 2, the Local Entities' contribution measured in this manner is $3,182,089 annually.

[If one capitalizes this amount at 9% forever (e.g. 100 years) it translates to a Local Entity capital contribution of $35,350,150.]

The above calculations do not take into account the value of the Local Entities' obligation to purchase the Indians surplus local water at 90% of imported prices for the first 7,000 acre feet and 80% of imported prices for the remainder.

TABLE 2

CONTRIBUTIONS OF THE LOCAL ENTITIES

Item	Capital Contribution 1/	Amortized Annual Contribution 2/	Annual O&M 3/	Total Annual Cost 4/	Amount Allocable to Indian Benefit 5/
Henshaw Dam & Reservoir	$ 24,200,000 6/	$ 2,355,540	$ 50,000	$ 2,405,540	$ 1,202,770
Escondido Canal	11,000,000 7/	1,070,700	160,000	1,230,700	615,350
Wohlford Dam	2,200,000 8/	214,140	20,000	234,140	117,070
Warner Ranch Ground Water Basin	10,900,000 9/	1,060,966	---	1,060,966	530,483
7,000 Acre Foot Guarantee	13,300,000 10/	1,294,574	---	1,294,574	647,287
Existing Wellfield & Related Facilities	600,000 11/	58,402		58,402	29,201
Redeveloped Wellfield & Related Facilities	1,740,000 12/	169,365	244,200 13/	244,200 169,365	11,700 14/ 28,228 15/
Payment for 6000 Acre Feet CVP Water 16/			600,000	600,000	--- 17/
TOTAL:	$ 63,940,000	$ 6,223,687	$1,074,200	$ 7,297,887	$ 3,182,089

TABLE 2 NOTES

1. Cost of constructing facilities based on construction costs prevailing at end of 1985.

2. Determined by amortizing capital costs over 30 years at 9% interest.

3. Actual 1985 O&M costs were used for facilities in existence. O&M estimates for new facilities were based on 1985 price levels.

4. Sum of amortized annual contribution and annual O&M.

5. Unless otherwise noted since Indians receive 50% of water; benefit is 50% of annual cost.

6. Includes land acquisition costs for land inundated when reservoir is full to the bottom of the notch in existing spillway. See Draft Bill, Sec. 3(a)(7)(C)(i)(I).

7. Does not include land acquisition costs. See Draft Bill, Sec. 3(a)(7)(C)(i)(II).

8. Includes land acquisition costs for land inundated when reservoir is full to the top of existing spillway. See Draft Bill, Sec. 3(a)(7)(C)(i)(III).

9. Value attributable to Warner Groundwater Basin estimated to be 45% of the replacement cost of Henshaw Dam and Reservoir.

10. Value attributable to 7,000 acre foot guarantee estimated to be 55% of the replacement cost of Henshaw Dam and Reservoir.

11. Estimated value of existing wells which can be used in redeveloped wellfield. See Draft Bill, Sec. 3(a)(7)(C)(ii).

12. The estimated capital cost of the new redeveloped wellfield is $2,900,000. The Local Entities will pay 60% or $1,740,000. See Draft Bill, Sec. 3(a)(7)(C)(iii).

13. The estimated O&M for the redeveloped wellfield will be $465,000 annually. The Local Entities will pay 50% of the $348,000 power cost ($174,000) and 60% of the remaining $117,000 O&M costs ($70,200) for a total of $244,200.

14. Since the Indians pay 50% of power cost none of Local Entities' power cost is allocable to Indian benefit. However, Local Entities will pay 60% of remaining O&M costs ($70,200) as compared to Indians 40% ($46,800), and so half of the difference of $23,400 ($11,700) is for the Indians' benefit.

15. Local Entities will pay 60% of the redeveloped wellfield amortized capital costs ($169,365) as compared to the Indians 40% ($112,910), and so half of the difference of $56,455 ($28,228) is for the Indians' benefit.

16. The estimated cost of the CVP water is $100 per acre foot ($100 x 6,000 = $60,000).

17. Since Local Entities are purchasing this 6,000 acre feet of CVP water at the Indians' cost, there is no additional Indian benefit.

B. Contribution Of Indian Bands

The settlement will require the Indians to pay 40% of the cost of constructing new facilities and maintaining and replacing all facilities necessary for the optimum utilization of the Warner Ranch Wellfield (Draft Bill, Sec. 3(a)(7)(C)(iii)), and to be responsible for providing all the funding for covering or placing underground the open Escondido Canal where it traverses portions of the San Pasqual Indian Reservation. (Draft Bill, Sec. 3(a)(7)(E).)

These contributions are similar to those of the Local Entities and thus were evaluated the same way. Engineering estimates were prepared for capital costs prevailing at the end of 1985. These capital contributions were then amortized over a 30-year period at a 9% rate to obtain the value of the annual capital contributions.

The settlement contemplates that the Indians will not be responsible for any O&M on the Escondido canal (Draft Bill, Sec. 3(a)(7)(c)(i)] so the annual capital cost of the undergrounding equals the total annual cost, and all was allocated for Indian benefit.

In regard to the wellfield, the settlement contemplates the Indians will pay 50% of the annual power costs and 40% of all other costs (Draft Bill, Sec. 3(a)(7)(C)(iii).)

As previously discussed, the Indians will also pay the O&M portion of the water charges applicable to a new CVP project use irrigation water customer receiving water delivered to the Delta (Draft Bill, Sec. 5(a)(2)(A)) and the O&M power portion of the charges applicable to a new CVP project use irrigation water customer (Draft Bill, Sec. 5(b)(2)).

The Indians also have agreed to pay all other costs associated with conveying the 22,700 acre feet of water through nonfederal facilities to their reservations (Draft Bill, Sec. 5(a)(2)(B)). The total cost of the CVP water and power O&M charges and the conveyance costs is estimated to be $100 per acre foot or $2,270,000 for the 22,700 acre feet. However, since the settlement contemplates that the Indians will sell 6,000 acre feet of the CVP water to the Local Entities at their cost of delivery (estimated to be $100 per acre foot) $600,000 is deducted to reach the total net Indian cost and contribution.

As shown in Table 3, the total Indian contribution measured in this matter is $2,149,715 annually.

[If one capitalizes this amount at 9% forever (e.g. 100 years) it translates into an Indian capital contribution of $23,881,402.]

The above calculations do not take into account the additional costs which the Indians have agreed to pay associated with conveying the CVP water from the point of delivery to their reservations (Draft Bill, Sec. 5(a)(2)(B)).

TABLE 3

CONTRIBUTIONS OF THE INDIAN BANDS

Item	Capital Contribution 1/	Amortized Annual Contribution 2/	Annual O&M 3/	Total Annual Cost 4/	Amount Allocable to Indian Benefit 5/
Escondido Canal (Cover or Underground) 6/	$ 1,500,000	$ 146,005	$ ---	$ 146,005	$ 146,005
Warners Ranch Redeveloped Wellfield & Related Facilities	1,160,000 7/	112,910	220,800 8/	333,710	333,710
Water & Power Costs for 22,700 Acre Feet CVP Water 9/			374,868	374,868	374,868
Conveyance Costs for 22,700 Acre Feet CVP Water 10/			1,895,132	1,895,132	1,895,132
TOTAL:	$ 2,660,000	$ 258,915	$2,490,800	$ 2,749,715	$ 2,749,715
Local Entities' Payment for 6000 Acre Feet CVP Water 11/			-600,000	-600,000	-600,000
NET TOTAL:	$ 2,660,000	$ 258.915	$1,890,800	$ 2,149,715	$ 2,149,715

TABLE 3 NOTES

1. New construction estimate based on costs prevailing at end of 1985.

2. Determined by amortizing capital costs over 30 years at 9% interest.

3. Engineering estimates for facilities to be developed based on 1985 price levels.

4. Sum of capitalized annual contribution and annual O&M.

5. All the Indians' expenditures are for their own benefit.

6. The Indians agreed to be responsible for paying for covering or placing underground the open Escondido Canal where it crosses portions of the San Pasqual Reservation. See Draft Bill, Sec. 3(a)(7)(E).

7. The estimated cost of new wellfield facilities is $2,900,000. The Indians will pay 40% or $1,160,000. See Draft Bill, Sec. 3(a)(7)(C)(iii).

8. The estimated O&M for the redeveloped wellfield will be $465,000 annually. The Indians will pay 50% of the $348,000 power costs ($174,000) and 40% of the remaining $117,000 O&M costs ($46,800) for a total of $220,800.

9. The Indians will pay $1.57 per acre foot or $35,639 for 22,700 acre feet in O&M water charges and 4.67 mills per kWh or $339,229 for 72,640,000 kWh in O&M power charges for a total of $374,868.

10. Since the estimated total cost of CVP water is $100 per acre foot or $2,270,000 for 22,700 acre feet the conveyance costs are estimated to be $2,270,000 minus the $374,868 O&M charges or $1,895,132.

11. The estimated cost of the Indians' CVP water is $100 per acre foot. Thus, if the Local Entities purchase 6,000 acre feet at that cost, $600,000 must be subtracted from the Indians' net contribution.

C. Combined Local Contribution

The above discussion does not take into account the necessary contributions of other state and local parties (for example, the California State Water Project, MWD and SDCWA). Without the use of their already constructed facilities, the CVP water could not be brought to the Indian Bands' reservations.

Even without these other contributions the annual combined Local Entity and Indian contribution is $3,182,089 + $2,149,715 or $5,331,804.

[The equivalent capitalized contribution is $35,350,150 + $23,881,402 or $59,231,552.]

D. Comparison of Local and Federal Contribution

Tables 4 and 5 compare the local contributions with the federal contributions. (Table 4 uses foregone project use revenues for the federal contributions; Table 5 uses foregone PG&E revenues.)

TABLE 4

COMPARISON OF LOCAL AND FEDERAL ANNUAL CONTRIBUTIONS

(Using Normal Project Use Foregone Revenues)

	Cost	% of Total
Local Entities	$ 3,182,089	57.7
Indians	2,149,715	39.0
Total Local Contributions	5,331,804	96.7
Federal	183,596	3.3
TOTAL CONTRIBUTIONS:	$ 5,515,400	100.0

TABLE 5

COMPARISON OF LOCAL AND FEDERAL ANNUAL CONTRIBUTIONS

(Using PG&E Foregone Revenues)

	Cost	% of Total
Local Entities	$ 3,182,089	42.4
Indians	2,149,715	28.7
Total Local Contributions	5,331,804	71.1
Federal	2,167,532	28.9
TOTAL CONTRIBUTIONS:	$ 7,499,360	100.0

III. BENEFIT TO THE INDIANS

The Settlement envisions that the Indian Bands will receive benefits both from the local water and from the CVP water.

A. Benefit from the local water

The Settlement provides that the local water which orginates above the intake to the Escondido Canal will be divided 50:50 between the Bands and the Local Entities (Draft Bill, Sec. 3(a)(7)(A)). The annual average amount of water which can be developed by the existing and prepared facilities (including the redeveloped Warner Ranch Wellfield) is 17,560 acre feet annually. The Bands will thus have the right to make beneficial use of 8,780 acre feet of local water annually.

In order to determine the net benefit of the 8,780 acre feet, it is necessary to examine alternate uses of this water.

1. Indian Benefit Assuming Sale of all Local Water

The Local Entities have agreed to purchase all the Indians' water that is surplus to their needs at 90% of the Local Entities' cost of obtaining imported water from their alternate service (currently $202 per acre foot) for the first 7,000 acre feet per year and 80% of such cost for the remainder. (Draft Bill, Sec. 3(a)(7)(D).)

Assuming the Indians had no other use for the water, they could sell the first 7,000 acre feet for $181.80 per acre foot or $1,272,600 and the remaining 1,780 acre feet for $161.60 per acre foot or $287,648 for a gross annual benefit of $1,560,248. However, from this should be subtracted the Indians' cost of undergrounding the canal through San Pasqual and their share of the capital and O&M costs of the redeveloped Warner Ranch wellfield. As shown in Table 6, the Indians' net benefit of such a use of their share of the local water would be $1,080,538.

TABLE 6

VALUE TO BANDS OF LOCAL WATER ASSUMING ALL WATER IS SOLD TO THE LOCAL ENTITIES

Component Description	Net Cost or Sale Value to Bands
Gross Sale Value of 8,780 Acre Feet of Local Water	$ 1,560,248 1/
Indian share of local system costs	
Underground portions Escondido Canal on San Pasqual Reservation	-146,000 2/
40% of new capital development costs for Warner Wellfield	-112,910 3/
50% of power costs for Warner Wellfield pumping	-174,000 4/
40% of additional O&M costs for Warner Wellfield	-46,800 5/
Indian Cost Subtotal	$ -479,710
Net Benefit of Local Water	$ 1,080,538

TABLE 6 NOTES

1. Computed by taking 90% of the cost to the Local Entities of their alternative source of imported water (presently $202 per acre foot) for the first 7,000 acre feet per year of water sold, plus 80% of that cost for all additional water sold in the same year. See Draft Bill, Sec. 3(a)(7)(D).

2. Annual cost assuming 9% per annum interest and amortization over 30 years of estimated one-time expense for replacing portions of the canal with a pipeline of $1,500,000. Expense will be lower if canal is covered instead of being placed underground. See Draft Bill, Sec. 3(a)(7)(E).

3. Annual cost of further developing the Warner Wellfield assumes 9% per annum interest rate and amortization over 30 years of capital cost of $2,900.000, or $112,910 per year for Indians' 40% share. See Draft Bill, Sec. 3(a)(7)(C)(iii).

4. Annual power cost assumed to be $348,000. Indians pay 50%.

5. Total additional O&M costs are estimated to be $117,000 per year, or $46,800 per year for Indians' 40% share.

2. Indian benefit assuming use of water on reservation and sale of remainder

The Indians will undoubtly use some local water on their reservations. In the course of preparing for litigation, the Indians and the United States employed consultants to prepare reports on the practicable irrigable acres on these reservations. The data contained in those reports were used to determine which parcels on which reservations could be economically irrigated from the Escondido Canal and the anticipated net returns. Using these sources, it was possible to evaluate which acreage on each reservation would have an average annual return higher than $181.80 per acre foot. (This figure is 90% of the Local Entities' cost for imported water which is what the Local Entities agreed to pay for the first 7,000 acre feet of Indian water.)

Applying the above analysis, 3,676 acre feet could be beneficially used on the La Jolla, Rincon or San Pasqual reservations to produce revenues of $913,957. The remainder would be sold to the Local Entities at $181.80 per acre foot and provide an additional $927,907 on revenues.

From the total of $1,841,864, the Indians share of the costs of the San Pasqual undergrading and the Warner Wellfield must again be subtracted. Table 7 shows that the result of this use of the Indians' share of the local water would yield an annual net benefit of $1,362,154.

TABLE 7

VALUE TO BANDS OF LOCAL WATER ASSUMING ON-RESERVATION USE WHERE RETURN HIGHER THAN $181.80 PER ACRE FOOT AND SALE OF REMAINDER

Component Description	Water Amount	Net Cost, Agricultural Return, or Sale Value to Bands [1]
Agricultural Use on the Following Reservations: [2]		
La Jolla [3]	0 af	$ 0
Rincon [4]	2,275 af	583,008
San Pasqual [5]	1,401 af	330,949
Reservation Use/ Gross Value Subtotal	3,676 af	$ 913,957
Sale of Surplus [6]	5,104 af	927,907
Gross Amount/Use and Sale Value	8,780 af	$1,841,864
Indian Share of Local System Costs		
Underground portions of Escondido Canal on San Pasqual Reservation		$ -146,000 [7]
40% of new capital development costs for Warner Wellfield		-112,910 [8]
50% of power costs for Warner Wellfield pumping		-174,000 [9]
40% of additional O&M costs for Warner Wellfield		-46,800 [10]
Indian Cost Subtotal		$ -479,910
Net Benefit of Local Water		$1,362,184

TABLE 7 NOTES

1. Net agricultural returns only. No attempt has been made to quantify the value to the Bands of increased on-Reservation employment opportunities.

2. Includes only parcels on the La Jolla, Rincon, and San Pasqual Reservations where water developed and/or delivered by Escondido's and Vista's facilities is the only or most economic supply that could be made available, and where that water results in agricultural returns of greater than $181.80 per acre foot.

3. None of the La Jolla Reservation's practicably irrigable acreage would yield agricultural returns in excess of $181.80 per acre foot of applied water.

4. Includes 939.6 acres.

5. Includes 575.5 acres.

6. Computed by taking 90% of the cost to the local entities of their alternative source of imported water (presently $202 per acre foot) for the first 7000 acre feet per year of water sold, plus 80% of that cost for all additional water sold in the same year. See Draft Bill, section 3(a)(7)(D).

7. Annual cost assuming 9% per annum interest and amortization over 30 years of estimated one time expense for replacing portions of the canal with a pipeline of $1,500,000. Expense will be lower if canal is covered instead of being placed underground. See Draft Bill, Sec. 3(a)(7)(E).

8. Annual cost of further developing the Warner Wellfield assumes 9% per annum interest rate and amortization over 30 years of capital cost of $2,900,000 times Indians' 40% share. See Draft Bill, Sec. 3(a)(7)(C)(iii).

9. Annual power cost assumed to be $348,000.

10. Total additional operation, maintenance, and replacement costs are estimated to be $117,000 per year, or $46,800 per year for Indians' 40% share.

The above analysis understates the benefit to the Indians to the extent that such agricultural use would also provide on-reservation employment opportunities. Even assuming that the Indians would only irrigate the acres which provide an agricultural return in excess of $181.80 per acre foot, as shown on Table 7A, this use would provide potential additional benefits in the form of farm labor and management wages of an additional $1,068,248 for a total net benefit of $2,430,202.

Arguably, even this calculation understates the total potential net benefits of the local water. If the Indians decided to use additional amounts of their local water for other irrigable but less productive reservation land (e.g., La Jolla), there would be even more potential for on-reservation employment.

TABLE 7A

VALUE TO BANDS OF LOCAL WATER ASSUMING ON-RESERVATION USE WHERE RETURN HIGHER THAN $181.80 PER ACRE FOOT AND SALE OF REMAINDER

Component Description	Water Amount	Net Cost, Agricultural Return, Labor Value, or Sale Value to Bands 1/
Agricultural Use on the Following Reservations: 2/		
La Jolla 3/	0 af	$ 0
Rincon 4/		
Use	2,275 af	583,008
Labor Value		666,200
San Pasqual 5/		
Use	1,401 af	330,949
Labor Value		402,048
Reservation Use/ Gross Value Subtotal	3,676 af	$1,982,205
Sale of Surplus 6/	5,104 af	927,907
Gross Amount/Use and Sale Value	8,780 af	$2,910,112
Indian Share of Local System Costs		
Underground portions of Escondido Canal on San Pasqual Reservation		$ -146,000 7/
40% of new capital development costs for Warner Wellfield		-112,910 8/
50% of power costs for Warner Wellfield pumping		-174,000 9/
40% of additional O&M costs for Warner Wellfield		-46,800 10/
Indian Cost Subtotal		$ -479,910
Net Benefit of Local Water		$2,430,202

TABLE 7A NOTES

1. Net agricultural returns and labor value.

2. Includes only parcels on the La Jolla, Rincon, and San Pasqual Reservations where water developed and/or delivered by Escondido's and Vista's facilities is the only or most economic supply that could be made available, and where that water results in agricultural returns of greater than $181.80 per acre foot.

3. None of the La Jolla Reservation's practicably irrigable acreage would yield agricultural returns in excess of $181.80 per acre foot of applied water.

4. Includes 939.6 acres. Labor value represents costs of farm labor and management tasks which could be performed by Indians.

5. Includes 575.5 acres. Labor value represents costs of farm labor and management tasks which could be performed by Indians.

6. Computed by taking 90% of the cost to the local entities of their alternative source of imported water (presently $202 per acre foot) for the first 7000 acre feet per year of water sold, plus 80% of that cost for all additional water sold in the same year. See Draft Bill, section 3(a)(7)(D).

7. Annual cost assuming 9% per annum interest and amortization over 30 years of estimated one time expense for replacing portions of the canal with a pipeline of $1,500,000. Expense will be lower if canal is covered instead of being placed underground. See Draft Bill, Sec. 3(a)(7)(E).

8. Annual cost of further developing the Warner Wellfield assumes 9% per annum interest rate and amortization over 30 years of capital cost of $2,900,000 times Indians' 40% share. See Draft Bill, Sec. 3(a)(7)(C)(iii).

9. Annual power cost assumed to be $348,000.

10. Total additional operation, maintenance, and replacement costs are estimated to be $117,000 per year, or $46,800 per year for Indians' 40% share.

B. Benefits from the CVP Water

The Settlement provides that the Indians will receive 22,700 acre feet of CVP water delivered to a point in the San Diego Aqueduct in the vicinity of the Bands' reservations. (Draft Bill, Sec. 5(a)(1)) The Indians have agreed to pay all project use irrigation water and power O&M charges (Draft Bill, Sec. 5(a)(2)(A) and (b)(2)), all costs associated with conveying the water through non-federal facilities (Draft Bill, Sec. 5(a)(2)(B)), and all costs, including construction costs associated with conveying the water from the point of delivery to the Band's reservations (Draft Bill, Sec. 5(a)(2)(B)).

The Settlement agreement envisions that 6,000 acre feet of the 22,700 acre feet of water will be sold to the Local Entities at the Indians' cost. Thus, the Indians will have the right to make beneficial use of 16,700 acre feet of CVP water annually. In order to determine the net benefit of this 16,700 acre feet, it is necessary to examine alternative uses of this water.

1. Indian benefit assuming sale of all CVP water

The Settlement authorizes the Indians to sell or lease any water they do not use on their reservations (Draft Bill, Sec. 7(b)(1); see also Sec. 7(a)).

Presumably, the Indians would sell any CVP water that is surplus to their own reservation needs at the highest possible price. Since the cost of obtaining alternate imported water in San Diego County is currently $202 per acre foot, this water is estimated to have a sale value of $200 per acre foot. If all 22,700 acre feet were sole at $200 per acre foot, this would generate gross revenues of $4,540,000. However, from that must be subtracted the Indians' cost of obtaining this supply, which is estimated to be $100 per acre foot and the Local Entities payment of $600,000 for the 6,000 acre feet of water which the Indians will sell to them at cost. The net benefit of such a use of this CVP water as shown in Table 8 is $1,670,000.

TABLE 8

VALUE TO INDIAN BANDS OF SALE OF ALL CVP WATER

Component Description	Water Amount	Value/Cost
Total CVP Water Provided	22,700 af	$4,540,000 1/
Water and Power O&M Costs		-374,868 2/
Estimated Conveyance Costs		-1,895,132 3/
Total		$2,270,000
Local Entities' Payment	-6,000 af	-600,000 4/
Net Benefit of Sale of CVP Water	16,700 af	$1,670,000

NOTES TO TABLE 8

1. Assumes value of CVP water is $200 per acre foot.

2. Assumes Indians will pay $1.57 per acre foot on $35,639 in O&M charged 4.67 mills per kWh or $339,299 in O&M power charges for a total of $374,868. See Draft Bill, Sec. 5(a)(2)(A) and (b)(2).

3. Assumes estimated total cost of obtaining CVP water is $100 per acre foot or $2,270,000 for 22,700 minus the the $374,868 O&M charges. See Draft Bill, Sec. 5(a)(2)(B).

4. Assumes Local Entities will pay Indian cost of obtaining CVP water (estimated at $100 per acre foot).

2. Indian benefit assuming use of some water on reservation and sale of remainder

The Indians will undoubtely use some of the CVP water on their reservations. Unfortunately, there are no engineering studies which can be used to estimate the value of such use. Thus, all that can be stated is that it is likely that if some of the CVP water can be used on the reservation and provide a net benefit higher than that available by sale, it undoubtly will be done.

C. Total Net Benefits to the Indians of the Settlement

Table 9 shows that the combined total benefits to the Indians of both the local and CVP water will be at least $4,100,202.

TABLE 9

NET BENEFITS TO INDIANS FROM LOCAL AND
CVP WATER PROVIDED BY THE SETTLEMENT

	Amount	Percent
Local Water	$ 2,430,202	59.3 %
CVP Water	1,670,000	40.7 %
Total	$ 4,100,202	100.0 %

(DEB2:DLESCO.M1)

PREPARED STATEMENT OF JOHN R. TEERINK

The purpose of my statement is to describe the availability of water and power supply from the Central Valley Project (CVP) and the method of conveyance of that water to the San Luis Rey River in San Diego County as provided for in S. 2676.

I WATER SUPPLY

The source of supply of the 22,700 acre-feet authorized in S. 2676 would be from developed but as yet uncontracted supplies, of the CVP now occurring as outflow from the Sacramento-San Joaquin River systems in northern California.

The CVP was first authorized as a federal project with passage of the Rivers and Harbors Act on August 30, 1935, and the Emergency Relief Appropriation Act of 1935. in 1937, Congress reauthorized the project in the Rivers and Harbors Act, approved August 26, 1937 (50 Stat. 844, 850), which provides in Section 2 thereof, in part as follows:

> "* * * that the entire Central Valley Project, California, heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the first Deficiency Appropriation Act, fiscal year 1936 (49

> Stat. 1622), is hereby reauthorized and declared to be for the purposes of improving navigation, regulating the flow of the San Joaquin River and the Sacramento River, controlling floods, providing for storage and for the delivery of the stored waters thereof, for the reclamation of arid and semiarid lands and lands of Indian reservations, and other beneficial uses, and for the generation and sale of electric energy as a means of financially aiding and assisting such undertakings and in order to permit the full utilization of the works constructed to accomplish the aforesaid purposes: . . ."

The CVP has also been reauthorized and extended several times by subsequent legislation. The project is multiple purpose and consists of several dams, power facilities and conveyance works which are operated to make maximum use of the water supplies developed and controlled by those facilities. The Bureau of Reclamation has entered into long-term water supply contracts for about 8.5 million acre-feet of the developed supply. Of this amount, about 8 million acre-feet are contracts within the Central Valley and about 300,000 acre-feet are outside of the Central Valley basin in the counties of Alameda, Contra Costa, Santa Clara and San Benito. Approximately one million acre-feet of additional yield developed by the CVP is yet uncontracted. It is from this uncontracted yield that the proposed 22,700 acre-feet would come.

One of the issues raised by the proposed use of 22,700 acre-feet of CVP water is the concern that such use will exacerbate an existing water deficiency in the State. The California Department of Water Resources estimates the current supplemental water needs in the State to be about 1.8 million acre-feet annually (Bulletin 160-83, "The California Water Plan, Projected Use and Available Water Supplies to 2010," December 1983). Bulletin 160-83 states:

> "California's present water needs are being met by existing State, Federal, and local projects, and, in some areas, especially the San Joaquin Valley, by overdrafting ground water supplies. More water is available from the existing projects than is being used now, and this reserve could be used to satisfy increasing needs for a number of years, or alleviate existing overdraft, if necessary conveyance facilities were constructed in a timely manner."

The presently uncontracted yield of the CVP is a potential source of supply to meet some of the State's supplemental water needs. Although approximately one million acre-feet is available, only a portion of this yield can be delivered through presently constructed Federal conveyance facilities to potential water users. Additional facilities estimated to cost from one to two billion dollars will be needed to deliver CVP water to the majority of the areas of the State in need of supplemental supplies.

In addition to the funding requirements there is the time required to implement potential conveyance projects. It will take many years for planning, authorization and construction. For example, the Tehama-Colusa Canal of the CVP authorized in 1950 (64 Stat. 1036) did not commence water service until 1980. The Folsom South canal of the Auburn-Folsom South Unit of the CVP was authorized in 1965 (79 Stat. 615), however construction has been completed only through two of its five reaches. Although planned to serve an ultimate buildup of use of over

800,000 acre-feet per year, present annual deliveries are only about 40,000 acre-feet (Bureau of Reclamation, Central Valley Operations Coordinating Office, Report of Operations).

It can be concluded from the California experience that developed but uncontracted CVP water supplies will be available for many years when consideration is given to a realistic schedule for authorization, funding and implementation.

II POWER SUPPLY

The power required to pump the 22,700 acre-feet of water, about 72.6 million kilowatt hours, would be CVP "project use" power supplied by the Western Area Power Administration which markets the power pursuant to the CVP authorizations. This power is generated at hydroelectric generating facilities of the CVP and is imported from other sources, primarily in the Pacific Northwest. Power not needed for project use purposes is commercial power sold under contract to preference customers.

Power supplies in excess of project use and preference customer loads are sold by Western Area Power Administration to the Pacific Gas and Electric Company under Contract 2948A and are deposited into an energy account (known as Energy Account No. 2) established to provide for the sale, exchange, firming and transmission requirements of the CVP and may be withdrawn in the future to meet CVP customer loads. Power sales for the CVP during fiscal year 1984, as derived from the 1984 Annual Report of the Western Area Power Administration were as follows:

Customer	Power Delivered 1,000 KWH)
Bureau of Reclamation (Project Use)	1,237,982
Preference Customers (Commercial Use)	6,897,781
Pacific Gas and Electric Company (Energy Account)	1,439,753
TOTAL	9,575,516

Although project use power would be utilized for delivery of the CVP water, as proposed in S. 2676 this use would be subordinated to other project use purposes and, until after December 31, 2004, subordinate to existing commercial power customers. The Western Area Power Administration forecasts Energy Account No. 2 to be depleted by about the year 2004 but could be extended through full utilization of the CVP's capacity in the Northwest/Southwest Intertie. It can be concluded therefore that the existing commercial power customers will not be adversely impacted (see attached letter from Administrator William H. Clagett to Congressman Ron Packard dated March 18, 1986 re H.R. 3958). The loss of revenue to the United States will be small based on the replacement cost of the energy otherwise sold to Pacific Gas and Electric Company. At 35 mills per kilowatt hour this would be $2,540,000 annually for the 72.6 million kilowatt hours.

The CVP water and power cost components for operation and maintenance have been derived from discussions with the staff of the Western Area Power Administration and Bureau of Reclamation and from the Bureau of Reclamation, "CVP Ratesetting Policy Proposal", April, 1984. The details of the rate components and the federal government revenues that would be foregone are contained in the material submitted for Office of Management and Budget use and are appended to the statement of Mr. Paul Engstrand on S. 2676.

III CONVEYANCE

Since CVP conveyance facilities do not extend to the San Luis Rey River, delivery of the 22,700 acre-feet of water would be through State and local facilities after negotiated wheeling arrangements have been made. Central Valley Project water and power would be made available in the Sacramento-San Joaquin Delta at the intake of the California Aqueduct of the State Water Project (SWP). Water would be pumped and conveyed to terminal reservoirs of the State Water Project in southern California for delivery into the facilities of the Metropolitan Water District of Southern California (MWD). Through an exchange or direct delivery, the MWD would deliver the 22,700 acre-feet to the aqueducts of the San Diego County Water Authority for delivery at the San Luis Rey River. A map delineating the major water conveyance facilities in California is attached.

The State Water Project furnishes about 2.5 million acre-feet per year (ultimately 4.23 million acre-feet per year) to service areas in the San Joaquin Valley, San Francisco Bay area and southern California. Excess conveyance capacity exists in the California Aqueduct and during certain months would be available indefinitely to convey the 22,700 acre-feet.

The water delivery concept as envisioned in S. 2676 is similar to a Federal-State-Local exchange arrangement in the San Joaquin Valley known as the Cross Valley Exchange that has been in effect since 1976. Under this long-term exchange program, CVP water is conveyed by the SWP to Federal contractors in the southern San Joaquin Valley which cannot be served from Federal conveyance facilities. Water and power are delivered to the intake of the California Aqueduct for pumping and delivery to the Cross Valley Canal, a facility of the Kern County Water Agency in the southern San Joaquin Valley, where it is conveyed across the valley to the Federal contractors. A complex set of agreements between the Bureau of Reclamation and Department of Water Resources and between those agencies and the Federal contractors provides the mechanism for implementing the exchange. Under this program, up to 128,000 acre-feet per year of CVP water is being marketed for which no additional Federal investment was required.

The specific arrangements for conveyance of water through State and local facilities, and the cost of that conveyance have yet to be negotiated. Several meetings have been held with the California Department of Water Resources and the Metropolitan Water District on the concept, and various operational criteria and constraints have been evaluated. The San Diego County Water Authority has also expressed a willingness to negotiate a wheeling arrangement through its facilities.

The cost of conveying CVP water to the San Luis Rey River area will depend largely on the arrangements yet to be negotiated with State and local agencies. The Department of Water Resources includes through its annual reports on the SWP operations (Bulletin 132 series), the methodology for determining wheeling costs through the California Aqueduct to various delivery points. From the data available and assumptions made, it appears the cost will have economic feasibility.

Department Of Energy
Western Area Power Administration
P.O. Box 3402
Golden, Colorado 80401

MAR 1 6 1986

Honorable Ron Packard
House of Representatives
Washington, DC 20515

Dear Mr. Packard:

As requested by Nancy Mason of your staff, the Western Area Power Administration (Western) has reviewed the current draft of the San Luis Rey Indian Water Rights Settlement Act (originally introduced as H.R. 3958) to determine impacts on Western's power marketing program.

Under the proposed legislation, Central Valley Project (CVP) energy surplus to the needs of existing customers would be used for pumping 22,700 acre-feet of water from the CVP to the San Luis Rey Indian Water Authority rather than being sold to the Pacific Gas and Electric Company (PGandE) for deposit into Energy Account No. 2.

The energy sales by Western to PGandE are made during times when CVP energy supplies are in excess of the needs of CVP commercial firm power customers. Current projections for meeting the future energy needs of these customers show that the entire amount of energy sold to PGandE for deposit to Energy Account No. 2 will be repurchased by the late 1990's. However, these projections, which are based on current contractual commitments and the concept of depleting Energy Account No. 2 by the year 2004, could be modified to accommodate this proposal. For example, these projections do not contemplate the full utilization of CVP's Northwest/Southwest Intertie capacity. Full utilization of the Intertie could increase sales to PGandE and extend the life of Energy Account No. 2.

The costs associated with the proposed legislation are estimated based on the replacement cost of the energy that would otherwise be deposited in Energy Account No. 2. We estimate that replacement energy will cost 35 mills/kWh or, based on the need for 72.6 GWh of pumping energy, about $2,540,000 annually.

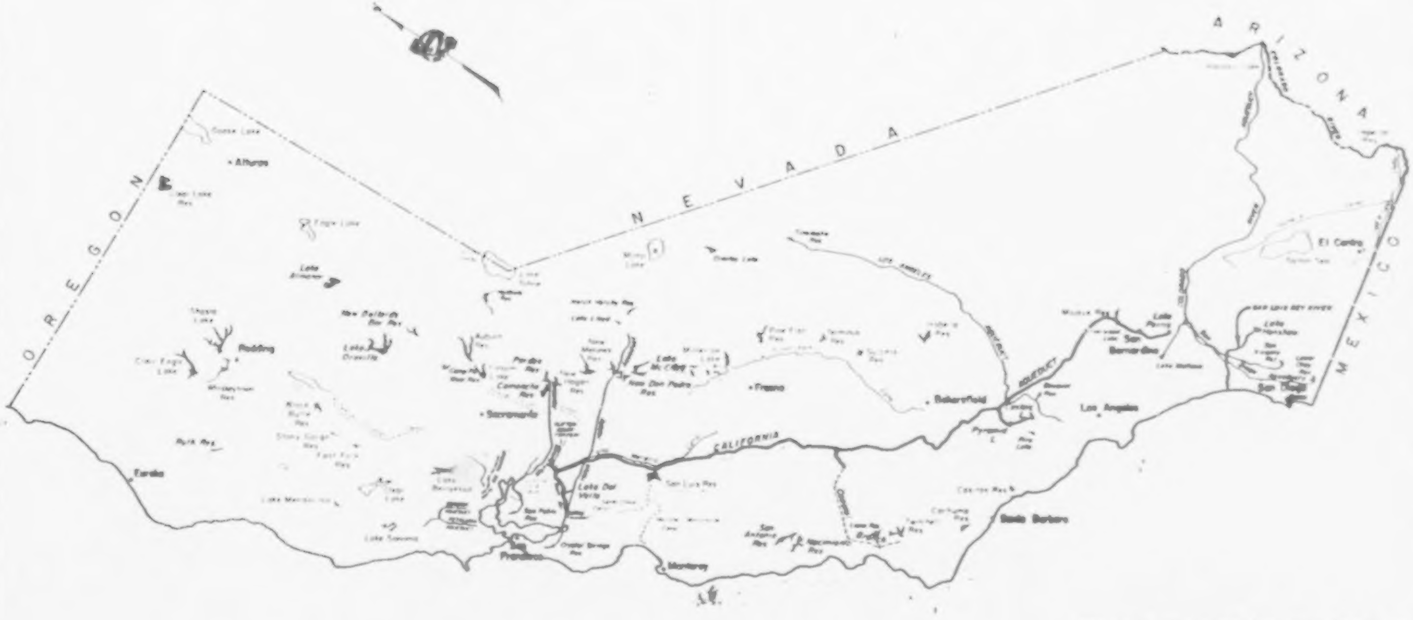
In summary, we believe that the proposed legislation is workable in that it avoids adverse impacts on Western's commercial firm power customers.

If we can be of further assistance, please let us know.

Sincerely,

William H. Clagett

William H. Clagett
Administrator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New Melones Res
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Lake McClure
New Don Pedro Res
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Lake Mathews
SAN LUIS REY RIVER
Lake Henshaw
San Diego
El Centro
COLORADO RIVER
PACIFIC
OCEAN

MAJOR SURFACE WATER SUPPLY
AND
CONVEYANCE FACILITIES
IN
CALIFORNIA

NOTE: MAP FROM CALIFORNIA DEPARTMENT OF WATER RESOURCES.

PREPARED STATEMENT OF HENRY RODRIGUEZ, CHAIRMAN, SAN LUIS REY INDIAN WATER AUTHORITY FOR PALA; CHAIRMAN, PLANNING COMMITTEE, LA JOLLA INDIAN RESERVATION

Mr. Chairman and members of the Committee. I submit the following statement on behalf and as Chairman of the San Luis Rey Indian Water Authority, (4/26/84), consisting of Pala, Pauma, La Jolla, Rincon and San Pasqual Indian reservations.

After over 100 years of controversial water disputes and in the last 20 years of intense costly litigation the principal [parties have agreed to a negotiated settlement. Extreme efforts have been taken by both parties to involve all other governmental agencies on various levels that would be effected by the negotiated settlement.

This settlement will benefit the North San Diego County communities and the five adjoining reservations.

Potential and Problems.

Indian reservation communities represent the least developed section of the economy and as a consequence, may have the most potential for long-range development and growth. This development is possible only if the same opportunities that are made available to the surrounding areas are also made available to these reservation communities.

There are undeveloped or underutilized natural resources on almost every reservation, agriculture land that has not been farmed, recreational spaces that have not been developed, and in some cases, minerals, or ores that have not been mined. There is an underemployed labor force which could make a significant contribution to local reservation economies if they were given the proper training and skills.

The major north-south transportation links are Interstate 5 along the Pacific Coast and US 163 inland through Escondido. Major unincorporated communities have developed along these routes including Fallbrook, Solana Beach, Cardiff, Encinitas, Rancho Sante Fe and Leucadia. A major link between San Diego and Los Angeles parallels Interstate 5. Palomar Airport, a general aviation airport is becoming the center of a growing commercial and industrial area. It does not have at this time a regularly scheduled carrier service.

The coastal areas of this sub-region provides cut flowers and nursery products sold throughout the nations, and the Valley Center and Pauma Valley area are known as the Avocado Capital of the world. Bordering the western area of the reservations the land development is in citrus and hothouse horticulture.

In spite of the rapid population growth, the area is largely rural and its economy has been basically agricultural until recently. While agriculture is still a large factor, other areas are more important in terms of employment with many of its residents commuting for jobs to other portion of the county. Service oriented businesses have grown to serve the military federal employees from Camp Pendleton and a growing retirement community.

Until the 1974-75 down-swing in the economy, light manufacturing businesses were increasingly coming into that area. The number of retail activities were also increasing to meet the needs of the growing population.

Problems

The reservations divide themselves into two groups, the upper group and the lower group. The upper group contains La Jolla, Rincon, San Pasqual and the two small Yuima tracts, which can all be irrigated by gravity water from the San Luis Rey River. The lower group contains the Pala and the Pauma.

While the Upper reservations can be supplied with gravity water from the San Luis Rey River, the surface supply will have to be supplemented with ground water. This is especially true for Rincon as there is a large area of this reservation located along the valley floor readily accessible to the ground water supply.

The Pauma Reservation must look to the surface supply in Pauma Creek and the underground source for its supply.

In the case of the Pala, the underground supply will have to be developed to its fullest extent and even then some imported water could be required especially during the critical years. It does not appear to be economically feasible to bring surface water from the San Luis Rey River to the Pala reservation even if there was a sufficient water supply.

The underground source of water must supply the domestic requirements for the initial area, both Indian's and non-Indian's.

The right of way from the Escondido Conduit across the La Jolla, Rincon and San Pasqual Reservations are absolutely essential to the operations of the Escondido systems.

To date, the Indians have received no benefits from this construction, on the other hand, they have received irreparable damage to these lands and to their economy from the loss of water resulting from the operations of the companies.

The various agreements between the water companies and the government for the Indians has had the effect of turning the entire control of the river over to the water companies, to the complete detriment of the Indians rights.

The heavy pumping of the underground basin above Lake Henshaw by the water companies has lowered the water table to the extent that most of the surface water sinks into the underground before reaching the reservoirs, which makes it impossible to determine the "normal flow" of the river as defined in the "Henshaw Agreement".

Owing to the fact that the companies have made it impossible to determine the "normal flow" (if the Indians are going to be required to live under the provision of the "Henshaw Agreement" then the companies should be required to deliver to the Indians a continuous flow.

The six c.f.c. maximum allowed to the Rincon and the Pala under the February 2, 1914 agreement between the United States and the Mutual Water Company does not provide enough water for the irrigatable lands of those reservations even under the existing irrigation systems.

The yield of the Henshaw Reservoirs as stated in the November 10, 1922 agreement between the San Diego County Water Company and the Escondido Mutual Water Company was completely in error.

The reservoir has never filled and the actual yield has been way below the estimated figure. It is therefore, very apparent that the yield of the river will not be sufficient to meet the ultimate water needs of the Indians, and provide water for the non-Indians development now depending upon that supply.

All of the present irrigation systems on the Indian reservations are badly in need of repair or need complete rehabilitation. (In most cases irrigation systems are now non-existent). If new lands are brought into the projects, then a complete revamping of the systems will be required.

Development Strategy and Plan for Implementation

Each reservation has their own resources potential for developments in the areas of agriculture, animal husbandry, light industry, hothouses, recreation, housing and mobil parks. Total acre's is 31,926(+); non-agriculture 21,415(+); irrigatable 10,511(+).

A. Development Goals.

The development strategy for Indian communities calls for the following goals:

- To increase the number of jobs and income for reservation members.
- To make the maximum and efficient use of reservation resources, such as land, labor, minerals and ores.
- To maximize the development of these resources for the use and profit of all reservation community members.

B. **Development Strategy.**

With the ultimate goal being the economic self-sufficiency of the reservation community, the following strategies will be employed:

- Obtain the necessary financial and technical assistance required for sound overall development, especially for the areas of agriculture, tourism and light industry in concert with environmental concerns. This includes development of the infrastructure system to deliver necessary water and energy required for expanding economic activities.

- Expand the existing cooperative approach in economic planning on a local reservation community level and recognized development on a multi-reservation and regional basis through the OEDP process.

- Educate the various local agencies and the general public of the jurisdictional accountability and responsibility the federal government has to the Native American Indian and the reservation community.

- Assess the Native American status in relation to the various governmental agencies for the purpose of establishing a working relationship to implement activities to strengthen the existing economic base of regions reservation communities.

- Develop definite lines of communication with all local agencies for the purpose of utilizing opportunities for overall resource development of the reservation community.

C. Priority of Programs and Project.

In order to maintain a balanced growth the five reservation communities have established goals for advancement of their human, physical and economic development resources through their tribally approved "Overall Economic Development Planning Program."

Overview.

Settlement provides the best, if not the only, viable solution. The advantages of a negotiated settlement include:

a. The ability to tailor solutions to the unique circumstances of each individual situation and to fulfill the rights of and obligations to Indian tribes in the manner that is least disruptive to their non-Indian neighbors.

b. The ability to provide Indian reservations with "wet water", as opposed to "paper" water rights without the capital or the facilities necessary to put them to use.

c. The ability to promote conservation and sound water management practices; and

d. The ability to establish the basis for cooperative partnerships between Indian and non-Indian communities to replace the adversary and often hostile relationships that currently exists.

The settlement contained in this title will:

A. provide the necessary flexibility in the management of water resources and will encourage allocation of those resources to their highest and best uses;

B. insure conservation and management of water resources in a manner consistent with the goals and programs of the State.

The settlement that would be implemented by the passage of S. 2676 would serve as a model for other settlements nationwide. It exemplifies all of the advantages of settlement over litigation, particularly in its establishment of the basis for both Indian economic self-sufficiency and the formation of a cooperative venture between the Indians and the communities of escondido and Vista for the efficient development and sound management of their water resources. Moreover, the federal government would not make any direct financial contribution to the settlement. Finally, the cost to the federal government of providing the additional water and power needed to implement this settlement would be very small, both in absolute terms and in comparison to the costs of other recent Indian water rights settlements.

C. The Proposed Settlement

The settlement which S.2676 would implement would put an end to these seemingly interminable and expensive legal proceedings. It consists of two basic parts:

1. The division of the local water and the costs associated with its development and distribution among the Indians, Escondido and Vista; and
2. The purchase by the Indians and delivery to the area of their reservations of Central Valley Project (CVP) water developed by the federal government.

1. The Local Water.

The local water component of the agreement in principle reached by the five Indian Bands, Escondido and Vista provides for dividing the waters of the San Luis Rey River System that originate upstream from the intake to the Escondido Canal; sharing the use of

Escondido's and Vista's existing water development facilities; operating, maintaining, replacing, and further developing the existing facilities; guaranteeing a minimum annual supply of water for the Bands' on Reservation use; and generating substantial profits for the Bands from the sale to Escondido and Vista of that portion of the Bands' share of the San Luis Rey water that they do not need at any given time.

The parties have agreed to divide the local water 50/50.

2. The Imported Water.

The second component of the proposed settlement to be implemented through S. 2676 is the federal contribution of imported water and the power required to deliver that water to the area of the Bands'Reservations. One of the major obstacles to settlement in the past has been a shortage of water. The San Luis Rey system can produce an average of about 18,000 acre feet of water per year above the intake to the Escondido Canal. That is not enough to meet the needs of all five Indian Reservations and still provide sufficient additional water to justify Escondido's and Vista's continued involvement on and investment in the River. Hence, the litigation is do or die for everyone. The proposed settlement under S. 2676 would solve this problem by bringing an additional 22,700 acre feet of water per year from the Central Valley Project (CVP), a federal reclamation project located entirely within the State of California, to the area of the Reservations at a cost to the Bands of approximately $100.00 per acre foot.

Great care has been taken in negotiating the proposed settlement and drafting S. 2676 to avoid affecting the vested or contractual rights or legitimate expectations of any of the present water or power beneficiaries of the Central Valley Project.

As part of the overall settlement - and specifically in return for Escondido's and Vista's guarantee to operate, maintain, and if necessary, replace Henshaw Dam, the Escondido Canal, and Wohlford Dam - the Bands have agreed to sell 6,000 acre feet per year of the CVP water to Escondido and Vista. Escondido and Vista would reimburse the Bands for the costs incurred in delivering the water to them.

The proposed settlement thus provides the basis for the five Indian Bands, Escondido, and Vista to work together to efficiently develop and properly manage the local water facilities for their mutual benefit. In addition, the cash flow provided to the Indians by the settlement would allow them to cut themselves from the federal government's purse strings for once and for all, and would do so without the construction of any new federal facilities or any direct federal appropriations. The settlement would thus make up for the government's past mistakes, enable the Bands to fulfill the purposes for which their Reservations were established, and permit Escondido and Vista to obtain a continued return on their investments and the benefits they bargained for and received from the federal government.

There are several justifications for this federal contribution.

First, it would be a relatively small price to pay for the very substantial benefits that the settlement would produce. S. 2676 would avoid the construction of costly new water facilities at federal expense or the creation of a tribal economic trust fund fueled with federal dollars.

Moreover, the federal government will have to continue to bear significant litigation costs of the dispute has to be resolved in court.

Second, the treatment of the five Indian Bands under S. 2676 would be very similar to the treatment of non-Indian water users under the federal reclamation laws in general and under those governing the Central Valley Project in particular.

Third, the federal government has traditionally provided that the capital costs of certain features of federal reclamation projects, flood control and fish and wildlife benefits in particular, are non-reimbursable because they fulfill important public policies.

So, the five San Luis Rey Indian Bands will not be treated any differently than other Indian Tribes under existing federal law.

Fourth, one of the authorized purposes of the Central Valley Project is to benefit Indian Tribes. If S. 2676 is enacted, the La

Jolla, Rincon, San Pasqual, Pauma and Pala Bands will be the first Indians to receive any such benefits. S. 2676 will therefore fulfill one of the original purposes of the Central Valley Project.

Fifth, the CVP water and power provided to the Indians under S. 2676 are in lieu of local water claimed by the Indians but to which Escondido and Vista will be entitled under the proposed settlement. The CVP water cannot serve that function or be delivered to the vicinity of the Reservations unless it is accompanied by low cost power. Because the federal government was responsible for permitting Escondido and Vista to divert the water of the San Luis Rey River away from the five Indian Reservation, it is equitable for the federal government to bear some of the costs associated with providing a suitable replacement supply.

On the other hand, if the settlement is implement, many tangible benefits will accrue to the federal, state and local governments and economies as well as to the Bands themselves. The need for welfare assistance, subsidized housing, food stamps, and other poverty related services to the Indian Reservations will be significantly reduced if not entirely eliminated. The same will be true for the special Indian programs administered by the Bureau of Indian Affairs and other federal agencies, since the settlement will make the Bands economically self-sufficient. Finally, economic development on the Reservations and its ripple effects in the adjacent non-Indian communities will produce increased federal, state and local tax revenues. While difficult to quantify with precision, these benefits could more than offset the decreased federal revenues that would result from S. 2676.

The Indians are contributing.

Yes, they are giving up their claims to one half of the developed water in the system, bearing the full cost of covering or undergrounding the Escondido Canal where it crosses one of the Reservations, paying over forty percent of the costs of extracting water from the Warner Groundwater Basin, paying the operation and maintenance component of the irrigation water project use rate for both the CVP water that they will receive and the power that will be used to deliver the water to the area of their reservations, paying for all of the additional new conveyance facilities that will be needed to bring water from existing facilities to their respective Reservations, and paying for all new water distribution facilities and irrigation systems on their Reservations.

C. Conclusion.

The litigation which spawned S. 2676 has been underway for 17 years now, and the federal government and the Bands still have nothing to show for all of their effort. If this Bill is passed and the proposed settlement implemented, five Indian communities will have the means to become economically self-sufficient without further need for the panoply of costly federal Indian services and programs they are now receiving. Instead of being a burden and a drain on the federal government, as well as the local taxpayers, the Bands and their members will become positive contributors to the local, regional, and national economies.

Thank you.

Mr. Chairman and Members of the Committee. I submit the following statement on behalf of the La Jolla Indian Reservation.

The La Jolla Indian Reservation is one of the five reservations that is located in the rural Northern regions of San Diego County, in Southern California approximately 60 miles from the Pacific Coast.

The La Jolla reservation was established in December 27, 1875, consisting of approximately 8,227 acres, which presently has a population of enrolled members 485. Of the 8,227 total acreage there are 1,589 acres of irrigatable lands and 6,638 acres of non-agricultural lands.

The reservation is governed by non-IRA Articles of Association approved in November 15, 1962.

Of the past 67 years of my life (3/5/1919), I have spent 41 years in tribal affairs struggling to improve the overall general welfare of the Native American. I have served my people as Chairman, Councilman, Consultant, and hold a special position with the Council of Elders. At the present time I am Chairman of the San Luis Rey Indian Water Authority, consisting of the five reservations, Pala, Pauma, Rincon, La Jolla and San Pasqual.

In my early days I remember the open ditch lines canals from water shed tributaries to irrigate farm lands and meadows, orchards of apricots, pears, apples, walnuts, olives, vineyards, corns, gain and gardens. The river provided natural foods and fishing there were cattle, sheep, horses, and an abundance of wild animals.

To the detriment of the community the limited BIA irrigation system constructed in 1911 (which served as domestic water) have long ago deteriorated beyond repair thus severely curtailing agricultural efforts.

Rapid decline of agricultural land use was caused by:

1. The transportation of water out of our watershed
2. Rapid growth of the surrounding communities in the past 30 years
3. The hundreds of wells drilled in the off-reservation nearby areas.
4. Further aggravation was caused by the continuous negative responses and attitude from the various agencies to the tribe pleading efforts to maintain a decent standard of living.
5. The diversion dam and canal transporting water outside of the reservation is located in the La Jolla Reservation.
6. Continuous holding of water in Henshaw Dam destroys fishing along the San Luis Rey River and is a detriment to the recreation and campground activities.

However, under such continuous adverse conditions, the Tribe still maintains a highly cooperative spirit and attitude towards the attainment of self-sufficiency by development of resources and thereby obtaining the needed economic base. These efforts to cooperate are substantiated by the many hours spent in meetings with the Tribe, attorneys, governmental representatives, the various principles concerned and others associated with litigation, negotiations and numerous attempts for a negotiated settlement.

We realize that social growth must grow parallel with economic growth.

In the past century since the creation of the Reservation and unfulfilled assistance the tribe has struggled under the most adverse conditions to maintain a dignified existence. For the past century litigation seemed to be the only recourse to solve the escalating water disputes. After 20 years of costly litigation and slow court proceedings the Tribe was still trying to solve our differences in a reasonable way. Finally, two years ago the two parties elected to proceed for a negotiated settlement.

The La Jolla reservation people have demonstrated their capability in developing their natural resources by implementing a Waterslide in 1984, Campground in 1950, both very successful, by leveraging their own funds, grants and loans. In addition, limited housing, and water development only because of need for additional finance. Water and economic development will provide for the 60% potential development of resources.

The Tribe has constantly maintained a highly cooperative spirit in discussion in an effort to negotiate a settlement equitable to all the principles concerned.

We would like to see an equitable settlement now so that we may realize these benefits for over-all growth and for our general welfare.

All benefits and revenues realized from the settlement will go towards economic development of our natural and social resources. We are confident that H.R. 4468 and S. 2676 will provide an acceptable solution.

I ask that you act most favorably on this document, H.R. 4468 and S. 2676.

Respectfully,

Henry Rodriguez,
La Jolla Indian Reservation

PREPARED STATEMENT OF PATRICIA NELSON

My name is Patricia Rose Nelson, and I am a Cupeno and Luiseno Indian from two of the reservations represented in the San Luis Rey River litigation.

We came here today with a tremendous sense of urgency, urgency brought on by the knowledge that back home on 5 small, isolated, reservations there are 5 Bands of Indian people, our people, who are depending on us to tell you the truth about us and to tell it in such a way that you listen - understand - and care.

Accompanying this sense of urgency is a failing sense of dependency, dependency brought on by the knowledge that again, it is the Indian that stands before this honorable body, as we have so many times in the past, asking for a chance, a chance to tend to basic needs of our people; needs that must be addressed if, as Tribe's, we are to survive. We come, once again, asking for what we believe is our vested and inherent right; the right to co-exist as the independent, sovereign Nation of Indian people that we perceive ourselves to be.

We are mindful, and respectful of your positions in government, and cognizant of your responsibilities to the people of *your* Nation. For this reason, we stand humble before you knowing, that the conclusions you reach today will impact and change the lives of 5 Bands of Indians, for better or worse, for now and ever after.

In 1969, the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians initiated the legal action which brings us to this forum today. It is our hope and purpose in coming before this honorable body, to clarify and state our position so that you might have before you relevant facts to expedite the decision making process.

The Cupeno, Luiseno, and Diegueno Tribes are represented on the 5 reservations involved in the San Luis Rey River litigation. The unity of purpose in our effort to resolve this long-standing dispute with the Escondido Mutual Water Company and Vista Irrigation District is best demonstrated by the spirit of cooperation in which we engaged in this pursuit. As dissimilar the 5 Bands are in language, cultures and traditions so are we *kindred* in our belief and commitment to the survival of our people. And that is how, and why, it came to be that these three (3) distinctly different, yet congenial, Tribes on 5 small reservations, joined together to engage in the most significant battle of our lifetime - the struggle over the rights to the waters of the San Luis Rey River - waters that we once believed could belong to no one.

The Diegueno, Luiseno and Cupeno people we represent today have suffered and struggled in ways that we hope to make you understand. It is our intention to increase your comprehension of what life we have, and what life we want. It is our goal to help you see, as we see, that the San Luis Rey river was a very special gift to us, from other powers, an offering which gave physical and spiritual strength, purpose and life to our Tribes and our people. In this, there was beauty, and it is that same beauty that we are looking for today. It is the beauty of success, opportunity, creativity, and the final knowledge, that in 1986, it is the very River we once depended upon for survival that will, again, bring us new life.

It would be an oversimplification to state that the very existence of the River promoted our Tribes. While it gave us some sense of security, albeit false, it did nothing to lessen the anguish, confusion, and difficulty of restructuring our lifestyles from that of a "nomadic" or "hunting & gathering" peoples to those confined by geographical barriers. As 5 Indian Bands, attempting to reconcile and adapt to a situation not of our making, then as now, the effort has been all ours.

The effort has taken its toll.

In 1986, the Pala, Pauma, Rincon, San Pasqual, and La Jolla Reservations are located in the most beautiful and bountiful part of Northern San Diego County. Situated amid acres and acres of avocado, and citrus orchards, surrounded by luxury homes, country clubs, golf courses, and ranches, each of the 5 reservations are quickly identifiable by the absence of growth, and the dry, barren, land.

A closer look, that few take, would reveal a population, plagued by unemployment, constrained by the lack of education, with few successes or achievements either as a Band, or individually. But, within these same people, you would undoubtedly notice a sense of spirit, tenacity, and determination of the same kind borne by the original founders of this great Nation of ours. It is this spirit, this sense of pride in ourselves, our land, and our resources that fuels our sprit, and perpetuates our race - We are survivors, against all odds, survivors who are asking for your help today so that we might step forward, and take control of our lives, and our destiny.

In the early 1800's it was noted by anthropologists that California had a projected Indian population of 250,000, greater any other state in the Nation at the time. Then, this population was comprised of countless small wandering "Bands", who travelled the State, moving with the seasons, flowing with the tide. Anthropologists described us as a "passive", peaceful in nature, unassuming, and "uncivilized" peoples, with no history of conflict or battle with the many people who came to California in the early days. We accepted then, as now, the rights of other people to share in the wealth of our lands, and willingly, without dissent, conceded to the numerous federal policies which dramatically reduced our populations, and confined us both bodily and spiritually.

I am a Cupeno and Luiseno Indian. My people, the Cupeno people, with my great-grandmother, Salvadora Valenzuela, and her children,Claudina and Katherine, among them were forcably, moved from our ancestral homes at Warner Hot Springs and moved to the Pala

Indian reservation in 1903. Armed federal troops supervised this move and the members of the Tribe were forced to leave cattle, horses, and other personal items behind because each was only allowed to take what they could carry in their arms.

When we got to Pala, each head of household was given a parcel of land to farm. In our situation, my Great Grandmother, being alone with children, was physically unable to meet this challenge. But, ever resourceful, she entered into a cooperative agreement with Mexican farmers in the area. They farmed the land and my great-grandmother received a percentage of the profits. The San Luis Rey River water was crucial to the success of that venture, and that is how my family, and other members of the Tribe, survived.

The cooperative agreement of the type my Great Grandmother entered into, is just a sampling of what types of arrangements were worked out, in those days, between our people and our Mexican, and American neighbors. It is demonstrative of the types of collaborations, partnerships, and joint ventures we, the Indians, have historically, and willingly, entered into so that all might benefit from the natural resources provided through the grace of still another power.

The 5 Bands specifically, and Indian people generally, have a respect for all life, and all peoples, a respect equal to no man. It was and is this reverence for life that directed us, as Indian people, to peacefully acquiesce our lands, our resources, our languages, and oftentimes, our peoples, so that others could enjoy, and prosper from the offerings of mother earth. And this is the crux of Senate Bill 2676.

And now we come to you.

Another power, another time - asking that you share with us as we once shared with you. So that we might have the chance to conclude an era of dissent, and strife, so that our people might begin a new life, with new opportunities, and renewed hope and faith.

22,700 acre feet of Central Valley Project water is what we ask that you share.

22,700 acre feet of water, an amount less than that routinely lost through evaporation, spillage, or waste.

An amount so insignificant that we were once told it was immeasurable. Insignificant, even as we are insignificant.

We have no delusions about ourselves. We know that our numbers are few, and our voice is faint - we understand fully that the value of ending the San Luis Rey river litigation is in the relief it will provide our non-Indian neighbors in Escondido and Vista. But - that's OK too.

Our neighbors in the Central Valley, we have been told, are concerned and worried that if our 5 Bands are allowed the one drop of water we need, then a precedent will be set - and others in Southern California will try to take water from the Delta as well. We are familiar with precedents - our Eastern brothers pretty much set a precedent when they welcomed the Pilgrims, and helped them farm, and settle in this new country.

To deny us water is to deny us life. Is that the precedent the Central Valley farms wish the Congress to set?

We are not immigrants. We are not refugees. We have no ties to or blood from any other Country. We are the original Americans. And yes, we do indeed hope a precedent will be set by the passage of Senate Bill 2676. A precedent which demonstrates that Congress and the American people are willing and able to accept responsibility for previous errors in judgment; a precedent which shows respect for the many, many, sacrifices the American Indian has made on behalf of our non-Indian neighbors. Sounds like a wonderful example to set!

5 small Indian Bands. Together in spirit, together in effort, like a single, tiny, blade of grass covered by asphalt yet still struggling to push through, looking for light, water, and life.

Please, we urge the Congress to pass Senate Bill 2676, and give us back our life.

Thank you.

PREPARED STATEMENT OF ROBERT S. PELCYGER

I have looked forward to this day since June of 1969 when, as a recent law school graduate, I went to the Federal Courthouse in San Diego and filed my first lawsuit on behalf of my clients, the Rincon and La Jolla Bands of Mission Indians, against the City of Escondido and the Escondido Mutual Water Company. I vividly recall my fears that my clients' interests would not be well-represented due to my relative inexperience and lack of familiarity with western water law.

My clients have looked forward to this day since 1895 when the waters that once passed through their Reservations were first diverted out of the San Luis Rey River watershed to the Escondido Valley. I remember being handed a copy of a 1914 water rights agreement between the Escondido Mutual Water Company and the Secretary of the Interior acting on behalf of the Rincon Band by the Chairperson of the Rincon Band and being asked what it meant. One of the first things I did was head to the Federal Archives and Records Centers where I spent countless hours pouring over old documents. I remember the sense of outrage, shame, shock and anger I felt as I read the Indians' numerous complaints about what had happened, from the turn of the century to the 1960s, and then followed the paper trail, which inevitably began with acknowledgments of the validity of the complaints, but lead time after time to the same outcome - no action, no explanation, shelved.

In my testimony here this morning, I'd like to review some of that history. My focus will be on the role played by the United States and my principal point will be that the problem we are all addressing here this morning and that some of us have been addressing in a different way for the past 17 years was caused by the United States government. Succinctly stated, Congress' laws were not faithfully executed. They were bent, twisted, circumvented and ignored. Mostly, they were ignored. We are not here today requesting handouts. We are here because the United States government has created a horrible mess and because the only fair and honorable way out of that mess is for the Congress to supply the glue that will enable the fragmented pieces to be put back together.

When most Indian reservations were established, neither the United States nor the Indians paused specifically to address the waters without which the reservations would be valueless. Nevertheless, the Supreme Court has held that the reservation and protection of the reservations' water resources were critically important, albeit implicit, parts of the process by which the reservations were created.

The reservations on the San Luis Rey River with which we are here concerned are different in this respect. The record clearly shows not only that the reservations were selected owing to the availability of water, but that the Indians were effectively cultivating their lands and utilizing those waters for a long time prior to the formal establishment of the reservations pursuant to the 1891 Mission Indian Relief Act. It also shows that when the Mission Indian Relief Act was under consideration, Congress knew of the intense competition for Southern California's scarce water resources and that the Indians were systematically being deprived of their few remaining lands and waters.

For example, the 1883 Report by Helen Hunt Jackson and Abbot Kinney, which eventually lead to the enactment of the Mission Indian Relief Act 8 years later, stated:

> Much of the land [on which the Indians are living] is valueless without irrigation, and the Indians are being deprived of their water rights wherever and whenever the interests of the whites demand the appropriation of such rights.

Under the Mission Indian Relief Act, Congress established a three member Commission charged with the responsibility of selecting a reservation for each band or village of Mission Indians in Southern California. The Commission's records demonstrate that the primary consideration in its selection process were the availability of water supplies and irrigable lands. The Rincon Reservation was selected because "nearly all of these lands are arable and well watered." Similarly, at Pauma, "the land is all arable, and either has been or can be, put under water." The Indians at La Jolla "have an abundance of water, and also of arable land, for their reasonable needs, and also for a considerable addition to their members." The water supply for all three of these reservations was the San Luis Rey River and its tributaries.

The Commission was concerned not only with setting aside good, arable lands with available water, but also with protecting those precious resources from "rapacious land-grabbers." Accordingly, "upon nearly all sides," the boundaries of the La Jolla Indian Reservation were drawn to encompass "considerable mountain land worthless for any purpose except to prevent encroachments by others upon" its precious land and water resources.

Tragically and ironically, less than three years after those words were written, the Interior Department approved an "agreement" granting Escondido's predecessor a right of way for a canal to divert the waters of the San Luis Rey River across those very same "worthless mountain lands." The lands that were set aside to protect the Indians from encroachments were allowed to house the facilities that have been used for the past 92 years to divert the waters of the San Luis Rey River away from the La Jolla, Rincon, San Pasqual, Pauma and Pala Indian Reservations.

That 1894 "agreement" set the tone for what was to follow. The "agreement" purportedly was entered into by a majority of the La Jolla Band's "chiefs and headmen," but one of the four named chiefs was not even an Indian. The only possible consideration to the La Jolla Band for the grant of the right of way across its lands was a promise to allow the Indians to obtain irrigation water from the canal. Contemporaneous documents reveal however that the Interior Department knew that this promise was illusory because none of the La Jolla Reservation's arable land could be served from the canal. The 1894 agreement purported to affect the Rincon Band's water rights, but neither the Rincon Band nor any Rincon Indians were parties. The canal crossed the lands of three reservations, La Jolla, Rincon and San Pasqual, but the right of way was limited to La Jolla.

These original mistakes were compounded time after time after time. In 1897, the Interior Department acted wisely. It rejected an agreement that would have permitted the canal to cross the Rincon Reservation (in a place where it could have done some good) in return for Rincon being supplied with water. The agreement was not approved, even though the canal was already in place, "in view of the difficulty experienced in dealing with whites obtaining a foothold on a reservation, however strong the agreement is drawn for the Indians' protection."

Unfortunately however, nothing was done about the trespassing canal. It remained in place for another 11 years when, in 1908, the Secretary granted an unconditional canal right of way across all three reservations for no consideration or compensation whatsoever. The right of way was granted because the canal was already in place. One would have supposed that the proper remedy would have been to eject the trespasser. Interior correctly rejected the 1897 Rincon right of way agreement, which would have done Rincon some good, but turned around and granted the same right of way for free eleven years later.

Let me skip a few episodes because they take more time to describe - and turn the calendar ahead to 1924. By that time Interior had entered into contracts in 1914 and 1922 on behalf of the Rincon and Pala Indians under which Escondido and Vista's predecessor had assumed virtually full control over the San Luis Rey River above the Reservations. The correspondence shows that by 1924 Interior officials recognized that it had made numerous mistakes in allowing Escondido and Vista's predecessor to capture, impound and divert the waters of the San Luis Rey River away from the 5 reservations. They were presented with a golden opportunity to correst those mistakes.

Escondido sought a license for its diversion facilities from the Federal Power Commission, now known as the Federal Energy Regulatory Commission or FERC. The Federal Power Act clearly states that such licenses cannot interfere or be inconsistent with the purposes for which Indian reservations were created, must be subject to the conditions imposed by the Secretary of the Interior that are deemed necessary for the adequate protection and utilization of the reservations, and must provide for the payment of annual charges for the use of Indian lands.

The license that was issued in 1924 did not satisfy any of these conditions. In 1979, unfortunately 55 years too late, the Commission concluded that the issuance of the 1924 license presented "a classic case" of interference with a reservation's purposes. The Interior Department was provided the opportunity to impose protective conditions in 1924, but declined to do so despite having previously concluded that the existing arrangements were not working and needed to be changed. No annual charges were imposed. Despite the fact that the use and occupancy of the Indian lands were absolutely essential to the very valuable water diversion project, the Bands did not receive any compensation at all from 1924 through 1957. After that, San Pasqual received $25 per year as a result of a minor amendment slightly increasing the amount of reservation land occupied by the project.

History repeated itself in the 1930s. In the late 1920s, Escondido and Vista's predecessor had unilaterally moved, improved and enlarged their diversion facilities on the reservations without having sought or obtained the permission of the Indian Bands, the Secretary of the Interior or the Federal Power Commission. Several years after the fact, Escondido got around to filing for an amendment to its license to legalize what had been done. Once again, the Interior Department was offered the opportunity to impose protective conditions and to seek annual charges. Once again, studies were initiated and investigations were made showing that the Indians had gotten a raw deal, and that the contracts were inequitable, if not illegal, and that drastic changes were needed. This time the Indians objected and specifically withheld their consent. But their views and interests were ignored. Once again the rationale for not doing anything was that the work had already been completed.

I could go on and on and on. By the time the federal government was through, Escondido and Vista were diverting 90 percent of the waters of the San Luis Rey River that had been reserved and set apart for the benefit of the five Indian Bands in the 1890s. Insult was added to injury because not only was the Indian water diverted, but Escondido and Vista were permitted to come onto the reservations and utilize the Indian lands to take away their water. Speaking from the perspective of someone who has spent the better part of the past 20 years fighting against this and other similar arrangements, I can attest that once they are done, they are extremely difficult to undo, no matter how strong the legal arguments or the historical inequities. The courts and the agencies are extremely reluctant to disturb the status quo.

The United States must bear major responsibility for the mess in which the Indian Bands, Escondido and Vista now find themselves. Only the United States Congress can resolve the situation in a manner that is truly fair and equitable to all concerned. We have here a 92 year old disaster that cries out for resolution. No one forum has jurisdiction over the entire controversy; yet all parts of the problem are interrelated. Because the problem is so multifaceted and involves so many aspects, including water rights, complex contracts, rights of way, theories of damages, FPC licenses and annual charges, the ultimate resolution of the litigation can reasonably be expected to consume another 15 to 20 years. Congressional action is the only realistic and practical alternative.

The proposed settlement that is authorized, incorporated and implemented in S.2676 is fair and reasonable to all affected parties and interests including the United States. The federal contribution is extremely modest both in absolute terms and in comparison to other settlements. None of the parties got everything they wanted and great care was taken not to interfere with any vested rights or contractual entitlements. There are no new facilities, and no adverse environmental consequences. The Bands have maximum flexibility to use their capital and water in the ways that will produce the greatest possible returns. No one is forced to farm. The settlement will enable the Indian Bands, Escondido and Vista to overcome the decades of adverse and hostile relationships and to work together in a constructive, mutually beneficial partnership as equals. Instead of being pockets of poverty in the midst of an otherwise affluent area, the five Indian reservations will be able to take their places as vibrant, positive contributors to the regional economy.

San Diego County Water Authority
2750 Fourth Avenue, San Diego, California 92103-6295 (619) 297-3218
(A Public Agency Organized June 9, 1944)

Francesca M. Krauel, Chairman
Dale Mason, Vice Chairman
Michael D. Madigan, Secretary
Lawrence R. Michaels, General Manager
and Chief Engineer
Paul D. Engstrand, General Counsel

August 6, 1986

The Honorable Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Re: San Luis Rey Indian Water Rights Settlement Act, S. 2676

Dear Senator Andrews:

The San Diego County Water Authority has recently been informed that hearings on the San Luis Rey Indian Water Rights Settlement Act, S. 2676, are scheduled to be heard before your Committee on August 11, 1986. This letter is to inform you that on July 10, 1986, the Board of Directors of the San Diego County Water Authority passed a resolution, a copy of which is enclosed, endorsing the San Luis Rey Indian Water Rights Settlement Act. Although the resolution was addressed specifically to the House version, H.R. 4468, it is our understanding that the Senate version, S. 2676, is substantially the same and, we therefore wish your Committee to note the Water Authority's approval of this type of settlement.

Sincerely,

Lawrence R. Michaels

Lawrence R. Michaels
General Manager and Chief Engineer
SAN DIEGO COUNTY WATER AUTHORITY

RESOLUTION NO. 86-29

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY URGING SUPPORT FOR AND COOPERATION IN IMPLEMENTING THE SETTLEMENT OF THE WATER RIGHTS DISPUTE BETWEEN THE CITY OF ESCONDIDO, THE ESCONDIDO MUTUAL WATER COMPANY, THE VISTA IRRIGATION DISTRICT, THE LA JOLLA, RINCON, SAN PASQUAL, PAUMA AND PALA BANDS OF MISSION INDIANS, AND THE UNITED STATES OF AMERICA.

WHEREAS, for over fifteen years legal actions have been pending in the United States District Court for the Southern District of California and before the Federal Energy Regulatory Commission involving the conflicting claims of the City of Escondido, the Escondido Mutual Water Company, the Vista Irrigation District, the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians, and the United States of America to the waters of the upper San Luis Rey River water system in northern San Diego County, California; and

WHEREAS, the City of Escondido, the Escondido Mutual Water Company, the Vista Irrigation District, and the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians, with the active cooperation and participation of personnel from the United States Departments of Justice and the Interior, have entered into an Agreement in Principle for the complete resolution of the water rights dispute among them; and

WHEREAS, the implementation of the Agreement in Principle will require the passage of an Act of Congress and the negotiation of agreements with the State of California Department of Water Resources, the Metropolitan Water District of Southern California, and the San Diego County Water Authority for the use of facilities owned and operated by those entities for the conveyance of water provided by the United States under the Act to the area of the Indians' reservations in San Diego County; and

WHEREAS, Congressman Packard was instrumental in assisting the parties in reaching their Agreement in Principle and has continued to work tirelessly to secure the passage of H. R. 4468, a bill which he introduced in the House of Representatives with the co-sponsorship of all of San Diego County's Congressmen and which will lay the groundwork for the implementation of the Agreement in Principle;

NOW THEREFORE BE IT RESOLVED, that the San Diego County Water Authority supports H. R. 4468 and the settlement for which it provides and respectfully memorializes the Congress and the President of the United States to take such steps as are necessary to effect its prompt enactment into law; and

BE IT FURTHER RESOLVED, that the San Diego County Water Authority will cooperate to the full extent possible consistent with its obligations to its member agencies in negotiating with the above named parties for their use of its facilities to deliver water provided by the federal government and implement the above described settlement.

PASSED, APPROVED and ADOPTED this 10th day of July, 1986.

Francesca M Krauel
Chairman, Board of Directors
San Diego County Water Authority

ATTEST:

Secretary, Board of Directors
San Diego County Water Authority

I, JANET RAVIART, Executive Secretary of the Board of Directors of SAN DIEGO COUNTY WATER AUTHORITY, do hereby certify that the above and foregoing is a full, true and correct copy of Resolution No. 86-29 of said Board and that the same has not been amended or repealed.

Dated: August 6, 1986

Janet Raviart
Executive Secretary
Board of Directors
San Diego County Water Authority

PREPARED STATEMENT OF ROBERT HOLDEN

My name is Robert Holden. I am presenting this statement in support of H.R. 4468 on behalf of the National Congress of American Indians, the oldest and largest national Indian organization, and the Native American Rights Funds, a national Indian legal rights organization, representing a number of tribes in water rights litigation. You have heard, and will hear, testimony today concerning the particular details of H.R. 4468 and the San Luis Rey water rights litigation and controversy. I'd like to briefly discuss the problems and opportunities presented by water rights disputes with particular focus on the role of the Congress in helping to resolve those disputes.

A very important goal of Indian people today is achieving economic self-sufficiency. The most important resources needed to reach that goal are our people, our land and our water. Water has always been indispensable to the lives of our people. It has sustained our people, our fish, our animals and our crops for tens of thousands of years before white people arrived. Since the arrival and subsequent expansion of Anglo culture, Native Americans have been confined to small areas that continue to dwindle. As a result, water has become even more critical to our survival. As the Supreme Court recognized in its landmark decision in the Winters case almost 80 years ago, the underlying, inherent promise of that policy was that water would be developed and used more intensively on those smaller tracts or reservations. It was either that or genocide.

The federal government did not fulfill its promises to protect and assist us in developing the water resources on our reservations. One example of the failure of trust responsibility was manifested by enactment of the 1902 Reclamation Act, which at that time was not considered to be anti-Indian legislation. The federal government embarked upon a massive effort requiring the expenditure of billions of dollars in contruction and operation costs providing enormous subsidies and benefits to non-Indians to farm vast expanses of land in the arid West. As accurately described in the 1973 Report of the National Water Commission: "With few exceptions these projects were built by the Department of Interior -- the very office entrusted with protection of all Indian rights -- without any attempt to define, let alone, protect, prior rights that Indian tribes might have had in the waters used for the projects..." The National Water Commission concluded that "...in the history of the United States Government's treatment of Indian tribes, it's failure to protect Indian water rights for use of the Reservation it set aside for them is one of the sorrier chapters."

Indian tribes and our non-Indian neighbors now face the legacy of the neglect of a federal government policy that encouraged and subsidized non-Indian agricultural development at the expense of Indian tribes. Disputes over scarce water resources between tribes, who have superior water rights but generally lack the means to put them to use, and non-Indian water users, with inferior rights but utilizing this precious resource through federal largesse, are ubiquitous throughout the West. No other issue has caused more conflict, tension and ill-will between tribes and their neighbors during the last century.

The dispute between the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians on one side and the Escondido and Vista communities on the other provides an excellent and all too typical illustration. The life-sustaining waters of the San Luis Rey River were developed and diverted by Escondido and Vista with the cooperation and assistance of the federal government and at the Indians' expense. The disagreement over those water rights divides and polarizes the Indian and non-Indian people and prevents them from cooperating for their mutual benefit. Financial resources of the litigants and the federal government are spent on attorneys, engineers, soil scientists, economists, agronomists, hydrologists, historians, anthropologists, judges, law clerks, courtrooms, administrative agencies and others, rather than to enhance the quality of the lives of the affected people. To date this litigation has covered 18 years with perhaps 20 years before a court decision is handed down. Meanwhile, the Indian people remain poor and unemployed, dependent on the whims of inadequately funded bureaucracies. A recurring dilemma Indian people often face is the choice of living on reservations with their families, traditions and heritage or abandoning their homeland in pursuit of employment opportunities, as this situation presents if this issue is not resolved.

Congress is the only institution that can alter the course of history and atone for these disastrous mistakes. In this particular fact situation a viable solution to Indian water rights disputes is through a negotiated settlement. A settlement here would enable the Indian reservations to develop and become economically self-sustaining in ways that are not disruptive to their non-Indian neighbors. This settlement will provide the basis for optimal use of scarce water resources and establish cooperative, mutually beneficial partnerships between Indian and non-Indian communities to replace the existing adversary and hostile relationships.

Water rights disputes in general and Indian water rights disputes in particular are extremely complex. They are difficult to litigate and even harder to settle. We believe this negotiated settlement is a tailored solution to this particular situation. If this legislation is not enacted the Indian and non-Indian parties have no choice but to continue with lengthy, expensive, burdensome litigation and the adversary relationships and tensions that are the inevitable by-products.

In considering this legislation we should not dwell on the theoretical and abstract. Rather, consideration must be governed by what is happening and will happen in the day-to-day lives of real people. It is especially important to keep in mind that the circumstances of poverty, litigation, polarization and discriminatory allocation of federal subsidies, resources and benefits are the direct results of mistaken and misguided federal policies and enactments which could be corrected by the settlement.

We therefore urge this Subcommittee, the full Committee and Congress as a whole, to consider this settlement and any proposed water rights in light of the following questions: Will it work? Is it fair to the immediate parties to the controversy and to any affected outsiders? Is the cost reasonable, especially in view of the alternative? We believe the answers to these three questions are affirmative and the required settlement legislation should be enacted. We also urge Congress to avoid dwelling on the question of any precedent that might be set by this legislation. Few Indian settlements are precedent setting in nature as each situation is different.

Enactment of this legislation would begin to remedy the government's past mistakes and disasterous policies. The parties to this settlement would avoid decades of costly litigation that polarizes Indians and non-Indians. We may begin to witness an improvement of the quality of life for Indian people, and fulfillment of the federal government's promise to assure that Indian reservations will be permanent, economically self-sustaining homelands for the Indian tribes. Those objectives could be achieved here.

We urge you to consider H.R. 4468 in this light and to act quickly and favorably in reporting this legislation. Thank you for inviting the National Congress of American Indians to address the issues and opportunites presented by H.R. 4468.

PREPARED STATEMENT OF ROGER FONTES

My name is Roger Fontes, and I am the Planning Director of the Northern California Power Agency. I am appearing today on behalf of the Northern California Power Agency ("NCPA") and the Sacramento Municipal Utility District ("SMUD"). SMUD is the single largest preference customer of power from the Central Valley Project. NCPA is composed of the eleven cities of Alameda, Biggs, Gridley, Healdsburg, Lodi, Lompoc, Palo Alto, Redding, Roseville, Santa Clara, Ukiah, and the Plumas-Sierra Rural Electric Cooperative, who likewise are preference customers purchasing CVP power. Together, approximately 70% of CVP's preference sales are made to these two entities.

At the present time, SMUD obtains about one-fourth of its electrical power supply from the CVP, and NCPA and its cities obtain about one-half of their electrical power supply from the CVP.

I would like to begin by giving you some background on SMUD and NCPA. SMUD was created in 1923, but because of numerous legal and other obstacles, it did not commence full operations until 1946. Today, SMUD serves an area of 890 square miles, has over 300,000 customers, and has a peak load in excess of 1800 MW. Although it owns nuclear, hydro, geothermal, solar, and combustion turbine units, a significant portion of its power comes from the Central Valley Project. Indeed, SMUD was one of CVP’s earliest customers, and its original contract dates back to 1952. Although NCPA itself was formed in 1968, some of the eleven cities and one cooperative composing the joint agency known as NCPA were providing electric service as early as the late 1800’s. Today, the member cities serve 250,000 customers, stretching as far south as Lompoc (near Santa Barbara) and up to Redding (near the Oregon border). Like SMUD, NCPA has extensive geothermal, hydro, and combustion turbine resources, but its member cities also depend on purchases from other utilities and power agencies, the most important being the CVP.

S. 2676 provides for the resolution of a long-standing litigation over Indian claims to water in Southern California between the Mission Indian Tribes and the Escondido Mutual Water Co., the Vista Irrigation District, and the United States

Government. Water in the amount of 22,700 acre-feet would be imported from the Central Valley Project and Project electricity will be made available to pump the water. The energy will be accounted for as "project use power," which is charged at the lowest rate available. Section 5(b)(3) restricts the use of the CVP power for this purpose if it would require power that is needed for (1) other project use purposes or (2) until December 31, 2004, to meet contractual obligations for CVP from power customers with contracts on the date of the Act. In addition, Section 5(b)(4) states that the Secretaries of Interior and Energy "shall take such steps as may be necessary to ensure" that the transfer to the Indians "will not result in any added power costs" for project use purposes or until December 31, 2004, to CVP firm power customers.

Now, a little background on the CVP and its current electric power delivery program. Unfortunately, the CVP project's electrical supply is not in a surplus condition, as apparently is the CVP water supply situation. Basically, the CVP has allocated 1152 MW of firm power supplies to preference customers. The CVP meets that supply commitment through an Integration Contract with Pacific Gas & Electric Company ("PG&E"), with purchases from the Pacific Northwest and with its own hydro power. Under the PG&E contract, the CVP has a capacity credit, based on hydrologic conditions, of about 950 MW. To the extent that S. 2676 would permit the Indian Authority and the

Secretary to override considerations otherwise governing the operation of the Central Valley Project, this capacity credit could be adversely affected. That would mean that the CVP would receive less revenue from PG&E so that rates to preference customers would have to be increased. Ultimately, the amount of firm power marketable might also have to be reduced.

At the present time, and on an increasing basis into the future, the CVP must buy additional power to meet its obligations. Moreover, although CVP can normally meet these additional commitments from the PG&E contract and the purchases from the Pacific Northwest, there is one exception: when the CVP is critically short of electrical power because of dry years or because of higher priority uses, as it has been in certain months in 1985 and 1986, our NCPA members have their firm power deliveries reduced ("withdrawn"). This is happening now; and in fact, many of NCPA's members had their firm CVP power supply permanently reduced in June 1986. There are two factors leading to this reduction -- increased pumping loads for irrigation by the Westlands Water District and high electrical loads throughout the CVP region.

Thus, NCPA and SMUD believe that any additional demands for CVP power will further reduce their allocations. This is why we can not support S. 2676 in its present form. Providing additional power, even as a "project use," to the Indian Tribes, we believe will cost the CVP and its municipal power customers millions of dollars per year. Our engineering consultant has estimated that about $2,000,000 per year, for increased CVP pumping cost alone, is a quite reasonable estimate. However, the Tribes will pay considerably less for the power. The question that begs an answer in the proposed legislation is whether the Secretary of Energy or the Secretary of the Interior, or some other Federal agency will be able to assure CVP's firm power customers that these additional costs -- whether direct or indirect -- will not lead to increases in their electrical power rates and/or a diminution of their allocations.

OUR POSITION ON S. 2676

The position of SMUD-NCPA is that we do not oppose the just resolution of the Mission Indian Tribes' dispute with the city of Escondido and Vista Water District, or with the Federal Government. We do oppose the provisions of the bill that would weaken the cost-based principles in the federal Reclamation Laws. Electric power from the Central Valley Project has been and will continue to be an important and economic source of electricity for our customers and the Federal Government as well. S. 2676, as a precedent and directly, could well erode the beneficial and significant role of the CVP project for our consumer-owned systems, and to the remaining preference customers in the northern and central California power picture. SMUD-NCPA suggest some mitigating measures to the legislation, but these suggested amendments do not resolve the fundamental and critical problems we believe are at issue in this Bill. There are better and far less adverse ways to settle the litigation between the Tribes, the Water Districts, and the government. We respectfully suggest that Congress leave the parties to these remedies, and not set a precedent that would undermine the Federal Reclamation Laws.

THE EFFECTS OF S. 2676 ON CVP PREFERENCE CUSTOMERS

Under present law, the preference power customers of the Central Valley Project pay not only for the fully allocated costs of power, but also for an irrigation subsidy. Thus, the Reclamation Acts of 1939 and 1944 are clear in this regard, as have been statements made to Congress by way of explanation of what principles govern the pricing of preference power. As Secretary of the Interior Udall stated in a letter to Congressman Aspinall in 1965:

> "Although the principles stated in section 9(c) of the Reclamation Project Act of 1939 pertaining to power rates are stated in terms of the minimum charge for power, they are also clearly intended to set the maximum charge. The Government of the United States markets power to serve the public interest, not to make a profit. We believe that

> the public interest is best served by marketing power at the lowest rate consistent with orderly repayment of all proper costs, and we believe that is what Congress intended." (As quoted in Pelz, Federal Reclamation and Related Laws Annotated, Vol. I, at 649.)

S. 2676 has the potential for violating these long-established cost-based principles. Specifically, the sale of additional CVP water, and the energy required to pump the water to the Tribes, located in distant Southern California, will ultimately require subsidies from other CVP customers. At least immediately, if the bill is passed, the CVP will be forced to forgo revenues that would otherwise be available from surplus power sales to private utilities. Also, and perhaps most dramatically, the energy used to pump water to the south may actually reduce the established capacity ratings of the CVP, requiring further firm power withdrawals and/or very expensive purchases from other utilities.

By defining the water (and power) supply to the Tribes as "project use," as the proposed legislation does, the CVP cannot collect sufficient revenues to cover its true costs. The current project use rate for electrical power is 4 mills/kwh while the fully allocated costs to preference customers is about 38 mills/kwh. Moreover, marginal power purchases made by the CVP to cover the energy deficits of the system are running anywhere from 30 mills to 85 mills/kwh. Obviously, buying power at 85 mills and selling it at 4 mills cannot be construed as having no financial impact on the CVP's balance sheets or its preference power customers. Also, the lost surplus power sales revenues, which would offset other CVP annual costs, will have to be recovered from the budget appropriations of another Federal agency, the Tribes, or other CVP customers of water and power. To the extent that there is no commitment by a Federal agency to underwrite or reimburse the CVP for added costs or the forgone power revenues (and none is evident), and no commitment from the Tribes (the bill provides only for payment by the Tribes of the water and power at the "project use" rates -- i.e., Operating and Maintenance costs only, but not fully allocated construction costs, etc.), then it appears that the added costs and forgone revenues would simply mean that power customers would make up the annual deficit.

Other concerns arise when the actual operations of the transaction to be authorized are considered. Under S. 2676 the water is to be scheduled at the direction of the Secretary of the Interior and the Indian Authority. The scheduling could require additional pumping energy in order to meet the established schedule. That could be detrimental to the project even if it is defined to be a CVP project use. If so, these added costs could arguably be attributed to the CVP Project, even though the delivery of water to the Tribes has no direct relation to the CVP Project.

It is SMUD-NCPA's position that the costs associated with the transaction in S. 2676 are wholly unrelated to the Project costs, and the legislation should clearly so provide. This is necessary because between power users and water users of the CVP Project, the water users' rates are constrained by an ability-to-pay standard. The rates of the power users are not so constrained. Accordingly, it is the concern of the preference power customers that any financial shortfall, due to the water and pumping transactions provided for in this bill, will necessarily fall upon the CVP power users, despite the language on limitations on costs in the bill.

Informal discussions with the supporters of this bill disclose that the effects described above are unintended. Nevertheless, we have been unable to trace precisely how the additional costs associated with the water transfer will be paid, as they must. Our ignorance makes us nervous. To dispose of any likelihood that power customers should bear the costs of the transfer to the Tribes and to better accomplish the intent of the bill that power costs for firm power users not be increased as a result, SMUD-NCPA would recommend an amendment to make such assurance a distinct part of the legislation, by simply providing that the rates for the preference power customers shall be established as if this bill were not law, thereby minimizing the likelihood of such an occurrence and clarifying the bill as well. (See Attachment A.)

Nevertheless, the potential for adverse effects on the cost-based power rates discloses the fundamental shortcomings of the bill from a public policy standpoint. Under S. 2676, the limitations as to cost increases and the quantity of CVP power available to CVP firm power customers will expire in 2004. At that time, any cost and quantity assurances for firm power users will vanish, and the policy issues discussed here will ripen immediately. As to that effect, SMUD-NCPA believe that however meritorious the cause, the use of CVP resources to satisfy an obligation of the United States government violates the very objectives for which these Northern California Projects were authorized: namely, the reclamation projects, including the Central Valley Project, were authorized to provide water and power at cost-based rates in the hope that such rates would assist in the economic growth and wide distribution of the benefits of water and electricity. Clearly, the cost-based rates from the CVP have contributed to the competitiveness of electric prices in the northern California region. Moreover, the power revenues have assisted in the greater distribution of the Project's water and power resources within the region. The efficacy of both these public benefits would be diminished if meritorious claims, not necessarily based on Indian claims, were sufficient to require the Project to become a cash register to satisfy claims that should be resolved on their own merits in the courts or in Congress.

As to an argument that may be raised that the financial impact of S. 2676 upon CVP power customers will not be major, the answer is that what is wrong is wrong, regardless of the magnitude of the dollar impact. (Current conservative estimates are that there will be at least a $2 million direct impact resulting from the proposed legislation; the indirect costs could amount to considerably more.) If Congress deems the amount at stake as small, then it is less necessary for the Federal Government to ask that the northern California municipalities contribute that amount to settle Federal litigation.

SPECIAL CONCERNS OF SMUD

SMUD is CVP's largest customer, and has a contract in place that extends well beyond 2005 -- until 2015. S. 2676 would affect both the price and the quantity of electricity available to SMUD under the contract during the period from 2005 to 2015. SMUD obtained its 2005-2015 contract rights as part of a settlement of a major lawsuit with the United States. (A copy of the settlement agreement is attached.) To obtain those and other contract rights from the Federal Government, SMUD gave up its claim to lower -- far lower -- electric rates during the period from 1983 to 1994.

SMUD bargained for its 2005-2015 contract rights with its own claims and assets. It did not ask the communities of Escondido and Vista, or the Mission Indians, or any other third party to contribute to the settlement. SMUD respectfully submits that it is clearly unfair to change the law now to require SMUD to give up rights that it obtained through one litigation settlement, after protracted and difficult negotiations, in order to enable the Federal Government to settle a second and unrelated piece of legislation.

Accordingly, SMUD and NCPA express their opposition to S. 2676 because of its direct adverse impact on its consumers' rates and allocations available and the bad precedent it would create in making CVP power revenues a source for future "raids." With the amendments suggested, there is less likelihood of immediate adverse impacts but Congress should accompany its adoption of the amendments with a clear understanding that the eventual viability of the Central Valley Project should not be eroded.

Thank you.

ATTACHMENT A

PROPOSED AMENDMENTS TO S. 2676
OF
THE SACRAMENTO MUNICIPAL UTILITY DISTRICT AND
THE NORTHERN CALIFORNIA POWER AGENCY

Amend Section 5(b)(3) and 5(b)(4) as follows:

(3) LIMITATION ON USE OF CERTAIN POWER. -- In fulfilling the requirement of paragraph (1), the Secretary of Energy shall utilize only surplus energy that would otherwise be sold to a non-preference utility and --

(A) shall not utilize any power that is needed for other project use purposes, and

(B) shall take such steps as may be necessary to ensure that the quantity of Central Valley Project firm power sold to preference customers shall be the same as it would have been if this Act had not been enacted.

(4) LIMITATION ON ADDITIONAL POWER COSTS. -- The Secretary of the Interior and the Secretary of Energy shall take such steps as may be necessary to ensure that the provision of power under paragraph (1) will not result in any added power costs for project use purposes and that rates to Central Valley Project firm power customers shall be the same as they would have been if this Act had not been enacted.

Contract #DE-MS65-83WP59070

UNITED STATES
DEPARTMENT OF ENERGY
WESTERN AREA POWER ADMINISTRATION
CENTRAL VALLEY PROJECT, CALIFORNIA

SETTLEMENT AGREEMENT AND AMENDMENT TO CONTRACT FOR ELECTRIC SERVICE TO THE SACRAMENTO MUNICIPAL UTILITY DISTRICT

1. This agreement, made this 15th day of April, 1983, in pursuance of the Act of Congress approved August 26, 1937 (50 Stat. 844, 850), the Act of Congress approved August 4, 1939 (53 Stat. 1187), the Act of Congress approved August 12, 1955 (69 Stat. 719), the Act of Congress approved October 23, 1962 (76 Stat. 1173, 1191), and the Act of Congress approved August 4, 1977 (91 Stat. 565), and Acts amendatory thereof or supplementary thereto, between the UNITED STATES OF AMERICA, hereinafter called "United States," represented by the Officer executing this Contract, a duly-appointed successor or a duly authorized representative, hereinafter called "Contracting Officer," and the SACRAMENTO MUNICIPAL UTILITY DISTRICT, hereinafter called "Contractor," its successors and assigns,

WITNESSETH:

2. Whereas the United States and Contractor entered into a Contract dated December 11, 1952, revised January 26, 1954, No. 14-06-200-290, and subsequently amended, hereinafter called "Contract," which, as amended, provides, among other things, for the sale and delivery by the United States to Contractor of up to 360,000 kilowatts of electric capacity and associated energy at not greater than Contractor's system load factor;

3. Whereas, the United States has filed a lawsuit against Contractor, United States of America v. Sacramento Municipal Utility District, Civil No. S-75-277, in the United States District Court for the Eastern District of California (hereinafter "United States v. SMUD"), to resolve disputes that have arisen between them over the interpretation of the Contract; and,

4. Whereas, the United States and Contractor have reached an agreement settling the aforesaid disputes; and,

5. Whereas, the purposes of this settlement agreement and contract amendment are: (A) to set forth the terms and conditions under which the aforesaid lawsuit has been settled, and (B) to amend the Contract to give effect to those settlement agreements;

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the parties agree as follows:

6. The term of the Contract is hereby extended to and including December 31, 2004. Contractor shall be entitled to a portion of any power (capacity and/or energy) marketed by the United States from the Central Valley Project (hereinafter "Project") on or after January 1, 2005 through December 31, 2014. Such portion shall be 360/1152 of the total of such power to be allocated or sold. Such power shall be offered by the United States to the Contractor on terms and conditions as provided by the law and marketing plans applicable at that time, except as limited by Article 8 and 14 hereof.

7. Contractor shall continue to make payments into escrow in accordance with the escrow agreement between the United States and Contractor dated February 27, 1979, until Contractor receives, and makes payment of, the bill rendered by the United States for power purchased by Contractor during the month of May, 1983. Upon the date the escrow holder receives payment of the May 1983 bill rendered by the United States to Contractor, the escrow holder shall distribute all securities and other assets in the escrow account to Contractor.

8. During the period from May 25, 1983, through October 31, 1984, the rate at which the United States will sell power to Contractor under the Contract, prior to application of the adjustments provided for in Article 5(b) of the Contract, shall be $2.00 per kilowatt of billing demand each month and 5.11 mills per kilowatt-hour of energy. On and after

November 1, 1984, the United States will sell power to Contractor at the United States' commercial power rates as provided in the rate schedules applicable to the power service which is being supplied by the United States to the Contractor, which rates shall be based on project-related costs including the cost of purchased power, shall not be based on the incremental or marginal cost of alternate electric energy or capacity or on similar methods which may be developed for the purpose of increasing the price of Federal power to market or competitive rates, and shall be subject to the provisions of Paragraphs 9, 10, and 11 of this Agreement.

9. The discounts now available to Contractor under the Contract shall remain in effect until and including December 31, 2014, except that the billing demand discount provided for in Article 3 of the letter amendment to the contract dated March 22, 1966, shall terminate effective June 1, 1994. On and after June 1, 1994, the Contractor's billing demand for any billing period shall be as provided in the applicable rate schedule.

10. Upon the execution of this Agreement, Article 5 of the Contract, dealing with rates and charges, shall cease to be effective. After the rate schedule now being proposed for Project power has been confirmed and approved on a final basis by the Federal Energy Regulatory Commission (or any successor authority), the United States will not seek to make any other rate schedule for firm power service applicable to Contractor

until June 1, 1988. The United States will not, in developing the rate schedule referred to in the previous sentence, seek to recover from Contractor any portion of any Project deficit created by this Agreement.

11. The provisions of the Judgment entered in United States v. SMUD on June 25, 1979, that apply to the Second and Third Causes of Action of the Fourth Amended Complaint, being superseded by the provisions of this Agreement, shall cease to be effective upon execution of this Agreement. The provisions of that Judgment relating to the Fourth Cause of Action in the Fourth Amended Complaint shall remain in effect, and, notwithstanding the termination of Article 5 of the contract pursuant to Paragraph 10 above, the United States may not establish a schedule of rates and charges for the sale of Project firm power to Contractor that is less favorable to Contractor than the schedule of rates and charges for the sale of Project firm power to any other resale customer.

12. No withdrawals of power for Project pumping or for public agencies in counties in which Project plants are located shall be made from the 290 megawatts sold to Contractor under the original Contract. Any withdrawals of power from the additional 70 megawatts sold to Contractor under the March 22, 1966, letter amendment to the Contract shall be for the purposes set forth in Article 2 of that letter agreement and shall be based upon policies that are adopted after rulemaking procedures and that are not less favorable to Contractor than to

any other resale customer.

13. During the remainder of the Contract term, Contractor may, at its option, at any time and from time to time, sell energy to the United States when the United States needs energy for sales to Project customers or for other purposes and is purchasing or unbanking energy from other sources and can use energy purchased from Contractor to displace the energy being purchased or unbanked. The price for any energy sold to the United States by Contractor pursuant to this paragraph shall be 90% of the price at which the United States could have purchased or unbanked energy from other sources.

14. On and after the effective date hereof through December 31, 2014, Contractor may, upon six months' notice, at its option, at any time and from time to time, reduce the purchases of energy that it is making under any contract for purchase of capacity or energy from the United States. Contractor may, upon eighteen months' notice, at its option, at any time and from time to time, reduce the purchases of capacity, and associated energy which it is making under such contracts. After such decreases, Contractor may, upon eighteen months' notice, increase its purchases of energy or capacity to the Contractor's entitlement or to any lesser level.

15. On and after the effective date hereof through December 31, 2004, and thereafter as provided in Article 6, upon eighteen months' advance notice, Contractor shall have the

option to purchase from the United States up to 100 megawatts of peaking capacity. Such peaking capacity will be delivered with such amounts of energy as may be requested by Contractor but not to exceed the amounts shown in the following table:

MONTH	KILOWATT HOURS PER KILOWATT
January	109
February	112
March	112
April	112
May	112
June	160
July	341
August	390
September	317
October	180
November	122
December	87

The energy, including losses, associated with such peaking capacity, will be returned to the United States by Contractor at times and rates of delivery satisfactory to both parties. If, by reason of its contractual arrangements with Pacific Gas and Electric Company, the United States suffers financial losses as a result of supplying Contractor with energy associated with peaking capacity and receiving equal quantities of off-peak energy in return, Contractor shall reimburse the United States for such losses either by a monetary payment or by supplying the United States with additional quantities of off-peak energy. The price of capacity supplied under this paragraph shall be established by rate schedules developed in accordance with the United States' standard ratemaking practices. The obligations imposed upon the United States by this paragraph shall terminate if it is determined in a final judgment rendered by a court of competent jurisdiction that such sales of peaking capacity to Contractor by the United States are a violation of law or would constitute a breach of any contract between the United States and a third party. The Contractor and the United States shall appear in any legal action in which the United States' right to make such sales of peaking capacity or Contractor's right to purchase such peaking capacity is in issue and they shall defend the United States' right to make such sales and Contractor's right to purchase.

16. The United States and Contractor shall file with the United States District Court for the Eastern District of California a Stipulation, in the form attached hereto, providing that the First Cause of Action set forth in the Fourth Amended Complaint in United States v. SMUD may be dismissed without prejudice.

17. This contract is subject to the approval of the General Counsel of the Department of Energy, the approval of the Department of Justice, the acceptance of the Stipulation of Settlement by the United States District Court for the Eastern District of California, and ratification by the Board of Directors of the Sacramento Municipal Utility District. It shall become effective on the date the last of these events occurs, and shall remain in effect until December 31, 2014.

IN WITNESS WHEREOF, the parties have caused this contract to be executed the day and year first above written.

THE UNITED STATES OF AMERICA

By David G Coleman
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Sacramento, CA 95825

SACRAMENTO MUNICIPAL UTILITY DISTRICT

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Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, vs. SACRAMENTO MUNICIPAL UTILITY DISTRICT, Defendant.	Civil No. S-75-277-MLR STIPULATION AND ORDER FOR DISMISSAL OF COMPLAINT AS TO FIRST CAUSE OF ACTION

Judgment having been entered herein on June 25, 1979, on the basis of a stipulation between plaintiff and defendant relating to the Second, Third, and Fourth Causes of Action in plaintiff's Fourth Amended Complaint and on the basis of the Court's order granting plaintiff's motion for summary judgment as to the First Cause of Action of that complaint, and defendant having appealed to the United States Court of Appeals for the Ninth Circuit from the portion of the Judgment relating to the First Cause of Action, and the United States Court of Appeals having held that this Court erred in granting summary judgment and having remanded the case to this Court for further proceedings, and plaintiff and defendant having entered into a settlement agreement, a copy of which is attached hereto, relating to the matters alleged in the First Cause of Action;

IT IS HEREBY STIPULATED that plaintiff's Fourth Amended Complaint may be dismissed without prejudice as to the First Cause of Action.

Dated:

DONALD AYER
United States Attorney

Assistant U.S. Attorney
Attorney for Plaintiff

David S. Kaplan
Attorney for Defendant

IT IS SO ORDERED:

Dated:

Judge, United States District Court

PREPARED STATEMENT OF DEBORAH SLIZ

The American Public Power Association is a national trade association that represents more than 1,750 non-profit, consumer-owned electric utilities operated by municipalities and other public bodies. More than 500 of those public power systems purchase power from the federal power system as preference customers. As your committees are aware, the preference clause gives municipalities and other consumer-owned utilities the first right to purchase power generated at federally owned dams and that is excess to the needs of the reclamation project itself. Federal power is sold at cost-based rates -- that is, rates are set at a level adequate to repay operation and maintenance costs, return the federal investment in the powerplant plus interest, and to cover certain non-power costs associated with other features of the project -- in particular irrigation. Public power systems in turn supply power to retail customers at cost-of-service rates that do not include a profit or rate of return.

Since 1902, water and power users have enjoyed a successful partnership under federal law. Power revenues repay well over half the reimbursable federal investment at multi-purpose projects built by the U.S., and this revenue stream is often the key to establishing the feasibility of those projects. Power customers not only repay 100% of the capital costs of the power plant facilities at federal projects -- with interest -- they also assist in the repayment of costs of irrigation facilities that are determined to be beyond the "ability to pay" of the irrigators. In the 15-state region where power is marketed by the Western Area Power Administration, which includes California, power users will pay more than $1 billion in irrigation assistance costs -- in addition to the more than $3 billion for the federal investment in powerplant facilities. In the Central Valley Project alone, power customers will pay $196 million in "irrigation assistance" costs.

Because the water and power functions of reclamation projects are so integrally related, proposed changes in the marketing or delivery of project water often has implications for power users. This is the case with the settlement before the committees today.

The American Public Power Association does not have a position on the overall settlement contained in S. 2676. We recognize that competing water rights claims are very difficult and sensitive political issues, and we commend the parties involved for their willingness to try to resolve these claims by settlement, rather than through lengthy and costly litigation.

The American Public Power Association opposes, however, those provisions of S. 2676 that authorize the Secretary to use "project use" power from the Central Vally Project to deliver water from the Sacramento-San Joaquin Delta to the Indian Water Authority. Designation of this new "project use" will reduce the power available for sale to preference customers, force those utilities to seek more expensive sources of replacement power, and undermine the preference clause. Providing Central Valley Project power at "project use" rates to accomplish the prescribed water delivery may also raise rates for remaining Central Vally Project power users and violate the cost-based pricing policies of current federal law.

The American Public Power Association believes that the full costs of the San Luis Rey settlement should be borne by the local entities that are involved in the litigation and that will benefit from having the dispute resolved. The Central Valley power customers are not parties to the lawsuit, will not benefit from the settlement, and should not bear any of the settlement costs.

The American Public Power Association recognizes the efforts of the bill's drafters to protect the Central Valley Project power users. These protections, however, are inadequate to protect preference customers from increased power costs and reductions in power due to the settlement requirements -- particularly after expiration of existing contracts.

The American Public Power Association believes that Section 5 of S. 2676 creates bad precedent by asking power customers to contribute to the costs of a settlement they are not party to, and by diluting the preference clause to accommodate a purpose not within the boundaries and scope of the authorized project.

PREPARED STATEMENT OF TOM DONNELLY

The Association of California Water Agencies is a statewide organization of over 350 water agencies which manage, conserve and deliver approximately 95 percent of the surface water used annually within the State of California for municipal, industrial and agricultural purposes. Well over 100 of these agencies depend on water supplies developed by the federal Central Valley Project.

Within the service area of the Central Valley Project, the pumping of groundwater basins presently exceeds natural replenishment and surface water supplies by 1.5 million acre-feet annually. While projects are planned to assist in alleviating about one-third of this overdraft, such as the proposed Mid-Valley unit of the Central Valley, an overdraft of 1 million acre-feet annually will continue.

Of the contracted supplies of the Central Valley Project which amount to 1.1 million acre-feet, there are presently under consideration proposals to commit as much as 25 percent of this water to fish and wildlife purposes as provided in H.R. 3113, and which was approved by the Senate Energy and Natural Resources Committee earlier this year and the full Senate last month. Future demands of present Central Valley Project contractors through the year 2040 amount to nearly two million acre- feet, which, in itself, would have the effect of absorbing nearly 200 percent of present contracted for supplies leaving an annual deficiency of nearly one million acre-feet annually.

S. 2676 would propose to transfer 22,700 acre-feet annually, of the already over-subscribed supplies of the Central Valley Project (CVP), approximately 500 miles from the Sacramento-San Joaquin Delta to San Diego County to satisfy claims of certain Indian Bands in the North San Diego County area. In order to do this, already fully-subscribed power supplies of the Central Valley Project would be allocated to pumping this water over several lifts on its journey to San Diego County, including a 1,900-foot lift over the Tahachapi Mountains south of Bakersfield. Unfortunately, nothing is proposed in S. 2676 that would do anything to develop replacement water supplies or power supplies utilized in this proposed transfer of water and utilization of CVP power supplies.

OPTIONS AVAILABLE

Salvage-Conservation

Under California water law, new supplies of water made available as the result of salvage or conservation measures can be utilized by the one responsible for the salvage or conservation measures. We would prefer to see the federal government satisfy the Indian claims by funding salvage or conservation measures and acquiring the right to use the salvaged or conserved water.

New Supplies

However, as we learned during the drought of 1976-77, CVP water supplies had to be cut drastically in order to meet minimum needs throughout the CVP service area. An allocation of a firm water supply of 22,700 acre-feet a year would only exacerbate this dry year shortage.

Because present supplies of water are fully committed, newly developed supplies could be an alternative that would attract little, if any, opposition from water user groups.

As this committee may be aware, well over $250 million federal tax dollars have been expended to complete the initial stages of construction on the Auburn-Folsom South Project.

This project is presently stalled because of the desire on the part of the U. S. Bureau of Reclamation to identify potential users of the water produced by the project. The firm yield of the Auburn Dam is approximately 330,000 acre-feet annually, with normal and wet year yields reaching nearly 900,000 acre-feet. This project, once constructed, could easily be the sole source of the water needed by the San Diego County Indians.

We would hope the members of the Energy an Natural Resources Committee and the Select Committee on Indian Claims share the concern of our members who would lose water from the already over-committed Central Valley Project's current water supplies under the terms of S. 2676 and yet witness the vacillation of the federal government to develop new water supplies from projects such as Auburn Dam.

With the assistance of the federal government, the Congress, and the Indians in San Diego, perhaps we can together augment instead of diminish California's water supplies.

PREPARED STATEMENT OF WILLIAM H. CLAGETT, ADMINISTRATOR, WESTERN AREA POWER ADMINISTRATION, U.S. DEPARTMENT OF ENGERY

Mr. Chairman, it is a pleasure to have this opportunity to provide you with the views of the Department of Energy's Western Area Power Administration (Western) on S. 2676, a bill to provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians in San Diego County, California.

The bill would provide for a legislative settlement of a long-standing dispute between the Mission Indian Bands and certain water users ("local entities") in San Diego County, California. As the findings in the bill recite, the dispute arises out of the inadequate water supply in the San Luis Rey River, which has not been to serve both the needs of the Mission Indian Bands and the needs of the local entities.

In order to ameliorate that condition, certain water deliveries to the Indians are provided for in the settlement. In that regard one of the major features of the settlement is the provision that the Secretary of Interior deliver 22,700 acre feet of water annually and in perpetuity from the Federal Central Valley Project (CVP) to the San Luis Rey Indian Water Authority in the vicinity of the Bands' reservations. The bill also contains specific provisions regarding how the electric power--which will be necessary to make such annual water deliveries--is to be provided. It is those provisions regarding power which involve the interests of the Department of Energy acting by and through Western. Consequently, the comments set out hereinafter will be limited to that aspect of the bill.

Section 5(b) of the bill specifies two possible sources for the electric power to be used in making the annual water deliveries. To the extent that it is available, the bill directs that "project use power from the CVP" shall be used. However, the bill further provides that to the extent such power is unavailable from the CVP, then the Secretary of Energy is authorized to obtain or acquire such additional power as may be needed to accomplish the required water deliveries until the power required can be made available from the CVP. The ramifications of the use of each of those two sources of power deserve comment.

The term "project use power" is defined in section 2(6) to mean "... CVP hydroelectric power and power from other sources used in the operation of the CVP irrigation facilities and for other purposes specifically authorized by Congress." The bill further provides, in section 5(b)(3), that in obtaining any needed additional power the Secretary of Energy may not use any power which is needed for other project use purposes, or until after the year 2004, from CVP firm power customers' contractual entitlements.

It should be noted that the "project use power" which would be used to deliver the settlement water is power that is excess to the immediate needs of the CVP. This power, but for such use in making those water deliveries, would have been banked with the Pacific Gas and Electric Company (PG&E) by Western pursuant to an existing contractual arrangement. One aspect of the arrangement is that excess energy delivered to PG&E by Western is deemed to be deposited to an Energy Account No 2, and PG&E pays Western for the actual cost of the energy at that time. Western has the contractaul right to repurchase from PG&E, on a first in - first out basis, the energy which has been deposited to that Account.

Since we currently anticipate that all of the power which will be needed for the water deliveries will be power which would otherwise have been deposited by Western with PG&E under the abovementioned arrangements, Western will forego the revenues which would have been received from the sale of such power to PG&E. While we do not object to the use of foregone power revenues in this particular Indian settlement, we wish to emphasize that this federal power subsidy is a unique situation and should not set a precedent for similar cases. The costs associated with the bill are estimated based on such foregone revenues, since they will not be available to help repay the government's investment in the CVP. Therefore, these foregone revenues are in actuality a part of the contribution of the United States to the settlement. Western estimates the foregone revenues at 35 mills ($.035) per kilowatthour or, based on the need for 72.6 million kilowatthours of pumping energy, about $2.5 million annually. Western believes that in order to clarify the intent of section 5(b)(4)(B) provision should be made whereby such foregone revenues in accordance with section 5(b)(4) are permitted to be credited for book purposes as if they had been applied as repayment of the government's investment in the project. Unless such provision is clearly made, the lack of credit for such foregone revenues will tend to cause rates charged CVP power users to increase. This would be in conflict with the protection provided in subsection 5(b)(4)(B).

The bill also authorizes the Secretary of Energy to acquire or obtain additional power which is required to make the water deliveries to the extent that such power is not available from the CVP. Section 5(b)(4) further obligates the Secretary of Energy (and the Secretary of Interior) to take such steps as may be necessary so that the provision of power for the water deliveries will not result in any added power costs for either project use purposes or "(u)ntil after December 31, 2004, to Central Valley project firm power customers to the extent of any contract or obligation in existence on the date of the enactment of this Act."

In the unlikely event that the Secretary of Energy, who would be acting by and through Western to purchased power solely to meet the requirements of this bill prior to the end of 2004, the question arises as to how the costs of such purchased power would be handled. The bill prohibits such purchased power expenses from being passed on to current firm commercial power customers so it would appear that there are only two possibilities. Either any such expense is intended to be borne by the United States until after 2004, or to be accumulated in some manner and recouped from future customers after the year 2004. We understand that the former interpretation is intended and that the language "until after December 31, 2004", in section 5(b)(4)(B) contemplates that any purchased power expense incurred after December 31, 2004, would affect the rates of firm commerical customers under contractual arrangements effective after that date.

Since any purchases of power made under section 5(b)(1) when CVP electric resources were inadequate would almost certainly be made from Energy Account

No. 2 established under the contract with PG&E, some observations regarding that are appropriate. Current projections for meeting future energy needs of these customers showed that the entire amount of energy sold to PG&E for deposit into Energy Account No. 2 will be repurchased by Western by the late 1990's. However, these projections, which are based on current contractual commitments and the concept of depleting Energy Account No. 2 by the 2004, could be modified to accommodate this proposal. For example, these projections do not contemplate the full utilization of Western's Pacific Northwest/Pacific Southwest Intertie capacity. Full utilization of the Intertie could increase Western's purchases and accordingly increase Western's sale to PG&E, thereby extending the life of Energy Account No. 2 so that power would be available for any purchases required to deliver settlement water to the Indians.

The only other portion of the bill that raises concerns is the definition of project use power. It should be revised to make clear that the traditional definition of project use power is being expanded in this one case solely for the purpose of this bill. Accordingly, we would strongly urge the addition of the following language to line 1 on page 3: "(6) PROJECT USE POWER. For the purposes of this Act only, the term 'project'. . . ."

In summary, Western believes that the power provisions of the bill allow a workable means to deliver water from Northern California to the Mission Indians, and with the recommended specific language changes incorporated would have no objections to its enactment. Again, I appreciate the opportunity to comment on S. 2676.

PREPARED STATEMENT OF HAROLD W. FURMAN II
ON BEHALF OF THE MID-VALLEY WATER AUTHORITY

Mr. Chairman, my name is Harold W. Furman II and I am an attorney with the firm of Heron, Burchette, Ruckert and Rothwell which represents the Mid-Valley Water Authority. I sincerely appreciate the opportunity to provide the views of the Mid-Valley Water Authority on S.2676, the San Luis Rey Indian Water Rights Settlement Act, and to specifically identify our concerns with this legislation.

The Mid-Valley Water Authority is a Joint Excercise of Powers Agency consisting of 29 public agencies in six counties of the San Joaquin Valley of California which was formed on December 3, 1982. The service area of the Mid-Valley Water Authority covers approximately 3.4 million acres of irrigated agriculture, and has a long term ground water overdraft of 1.5 million acre feet per year. The Mid-Valley Water Authority is currently seeking authorization for the Mid-Valley Canal to correct this overdraft problem and to provide some 500,000 acre feet of water to the area encompassed by the Mid-Valley Water Authority.

The Mid-Valley Water Authority and other Central Valley Project (CVP) contractors are not opposed to the resolution of the water rights claims of the bands of Mission Indians in San Diego County, California. However, the Mid-Valley Water Authority is unalterably opposed to the allocation of CVP water as the means of solving this problem.

For more than 30 years the people and public agencies of the existing CVP service area have received committments from the Bureau of Reclamation and the United States government that the remaining firm yield of the Central Valley Project would be allocated for their use. There currently exists a demand within the Central Valley Project service area of nearly 2 million acre feet. The ground water overdraft within the service area is also projected to be in excess of 2 million acre feet. Unfortunately, only 1.1 million acre feet of firm CVP water remains. Simply put, there is no firm Central Valley Project water supply available for use elsewhere in California.

P.L. 75-392 which authorized the Central Valley Project specifically provided authorization for a service area which included the Sacramento and San Joaquin Valleys. The Act never intended the use of Central Valley Project water south of the San Joaquin Valley. The California State Water Project and the Central Valley Project have always had specific service areas within the state of California without infringement upon the other. Now, for reasons that are unclear, the Central Valley Project is being called upon to provide the solution to problems that clearly exist within the service area of the Metropolitan Water District of Southern California and the San Diego Water Authority and far outside of the authorized CVP service area.

Adequate water is available from the Colorado River or entities presently being served with Colorado River water to provide the 22,700 acre feet of water necessary to effecuate this proposed settlement. The Metropolitan Water District is currently negotiating a water conservation project with the Imperial Irrigation District which would result in the conservation of some 400,000 acre feet of Colorado River water annually. In addition, we understand that 87,000 acre feet of Colorado River water could be conserved by lining the All American Canal. We believe strongly that conservation projects involving Colorado River water can supply the water needed by the San Luis Rey Indians without adversely impacting Central Valley Project water rights. Furthermore, we understand that there would be 50 percent power savings associated with transporting water from the Colorado River to the City of Escondido in the Vista Irrigation District as opposed to pumping water from the Sacremento-San Joaquin Delta. This savings of power alone could pay for a sizable conservation project on the Colorado River system.

In addition to a 50 year precedent for the use of CVP water within the authorized Central Valley service area, the water rights permits held by the Bureau of Reclamation contain specific place of use restrictions for the use of Central Valley Project water. The allocation of Central Valley Project water to the city of Escondido and the Vista Irrigation District would clearly violate the Bureau of Reclamation permits issued by the State Water Resources Control Board over which the Federal government has no jursidiction. Furthermore, these same permits contain point of diversion restrictions which can not be changed without state Board approval.

From the perspective of the Central Valley, it appears the S.2676 is not a settlement of Indian Water Rights claims but rather a cost savings program for the benefit of the City of Econdido and the Vista Irrigation District which would have severe adverse impacts on other entities who have not been parties to the negotiations that have resulted in this legislation. The key to this legislation is the delivery of Federal Central Valley Project water physically, or on paper, to the area of the Reservations at an estimated cost of $100 per acre foot. Escondido's and Vista's alternative, is water imported by the Metropolitan Water District and delivered by the San Diego County Authority at a present cost of approximately $202 per acre foot. From that standpoint it is difficult to view this legislation as anything other than a sweetheart deal for the municipalities in San Diego County at the expense of the agricultural interests in the San Joaquin Valley in terms of both water and the repayment of the capital costs associated with the Central Valley Project. We believe that any water delivered to municipalities should bear the current full cost Municiple and Industrial Water rate, not the lower agricultural rate.

Both Senator Wilson and Senator Cranston have stated that they may be willing to sponsor amendments to this legislation which would mandate the use of Colorado River water for the resolution of these Indian water rights claims. Indeed, both Senators have requested that the Department of the Interior investigate a source of water supply from the Colorado River. We would urge that no action on this legislation be taken by the Congress until and unless such an investigation has been completed. At the same time we would urge the Department to quantify the reasonable uses for water on the Reservation which the Indians may have, assuming that distribution of facilities could be provided.

In conclusion, Mr. Chairman, the Mid-Valley Water Authority opposes S.2676 as currently drafted and urges the use of Colorado River water for the settlement of these Indian claims be more fully explored before a settlement is agreed to.

Thank you for the consideration of our views.

PREPARED

STATEMENT OF THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA
ON S. 2676
SETTLING WATER RIGHTS CLAIMS
ON THE SAN LUIS REY RIVER
TO THE SELECT COMMITTEE ON INDIAN AFFAIRS
AND THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

AUGUST 11, 1986

The Metropolitan Water District of Southern California appreciates the opportunity to offer this statement on S. 2676 to settle water rights claims of Mission Indian Bands on the San Luis Rey River. Metropolitan is a public agency of the State of California, whose major responsibility is to import water for consumption in the coastal plain of Southern California. Our service area stretches from Ventura County to the Mexican Border and we are responsible for bringing to that area approximately half the water consumed by a population of over 13 million people.

The negotiations between the Indian and non-Indian parties over water rights in the San Luis Rey River to the extent they involve Metropolitan request Metropolitan to convey approximately 20,000 acre feet of water currently held under State permit by the Bureau of Reclamation from the Sacramento-San Joaquin Delta through the California Aqueduct and Metropolitan's facilities to a delivery point in the vicinity of the reservation lands. This involves wheeling the water for more than 500 miles including pumping it close to 4000 feet. Pumping power would be provided from resources available to the Western Area Power Administration. Metropolitan would not be expected to supply either water or power from its own resources.

Metropolitan has told the parties to the settlement that it will not take a position on the legislation. It will cooperate in implementing the legislation upon its enactment under these guidelines:

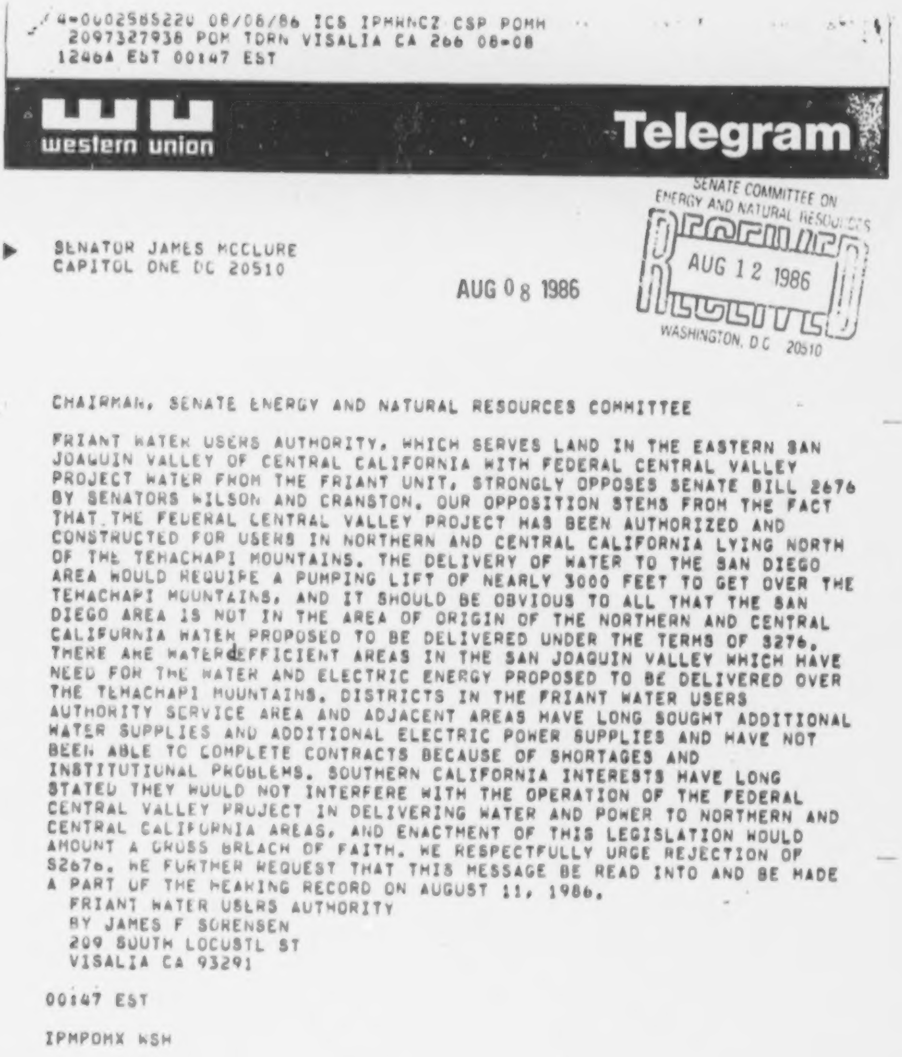
1. Whatever arrangement is made, i.e., wheeling of water to Indian tribes or purchasing the water in question on an interim basis or from time to time, Metropolitan must be made financially whole. We have no authority to provide any subsidy in this or any similar arrangement, but if we are made financially whole, we will cooperate in its implementation.

2. Whatever the arrangement, Metropolitan's service to its member agencies, under its statutory mandate, must take precedence in either wheeling or purchase and delivery of water. This is an operational matter, with which we do not foresee any great difficulties.

3. Any sales by the Indian tribes of Central Valley Project (CVP) water within Metropolitan's service area are to be made to or through Metropolitan.

4. Any water acquired by Metropolitan through the implementation of this settlement, whether on interim or short-term basis or otherwise, must be free and clear of any restrictions imposed by the Central Valley Project Act, the Reclamation Act of 1902, as amended, or the Reclamation Reform Act of 1982.

In conclusion, Metropolitan is available to work with the Committee in its consideration of S. 2676. We will continue to cooperate with the parties to the San Luis Rey River dispute upon passage of legislation in resolving the practical problems in transporting the CVP water supply from Northern California to the San Diego area.



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western union

Telegram

SENATOR JAMES MCCLURE
CAPITOL ONE DC 20510

AUG 08 1986

SENATE COMMITTEE ON
ENERGY AND NATURAL RESOURCES
RECEIVED
AUG 12 1986
WASHINGTON, D.C. 20510

CHAIRMAN, SENATE ENERGY AND NATURAL RESOURCES COMMITTEE

FRIANT WATER USERS AUTHORITY, WHICH SERVES LAND IN THE EASTERN SAN JOAQUIN VALLEY OF CENTRAL CALIFORNIA WITH FEDERAL CENTRAL VALLEY PROJECT WATER FROM THE FRIANT UNIT, STRONGLY OPPOSES SENATE BILL 2676 BY SENATORS WILSON AND CRANSTON. OUR OPPOSITION STEMS FROM THE FACT THAT THE FEDERAL CENTRAL VALLEY PROJECT HAS BEEN AUTHORIZED AND CONSTRUCTED FOR USERS IN NORTHERN AND CENTRAL CALIFORNIA LYING NORTH OF THE TEHACHAPI MOUNTAINS. THE DELIVERY OF WATER TO THE SAN DIEGO AREA WOULD REQUIRE A PUMPING LIFT OF NEARLY 3000 FEET TO GET OVER THE TEHACHAPI MOUNTAINS, AND IT SHOULD BE OBVIOUS TO ALL THAT THE SAN DIEGO AREA IS NOT IN THE AREA OF ORIGIN OF THE NORTHERN AND CENTRAL CALIFORNIA WATER PROPOSED TO BE DELIVERED UNDER THE TERMS OF S276. THERE ARE WATERdEFFICIENT AREAS IN THE SAN JOAQUIN VALLEY WHICH HAVE NEED FOR THE WATER AND ELECTRIC ENERGY PROPOSED TO BE DELIVERED OVER THE TEHACHAPI MOUNTAINS. DISTRICTS IN THE FRIANT WATER USERS AUTHORITY SERVICE AREA AND ADJACENT AREAS HAVE LONG SOUGHT ADDITIONAL WATER SUPPLIES AND ADDITIONAL ELECTRIC POWER SUPPLIES AND HAVE NOT BEEN ABLE TO COMPLETE CONTRACTS BECAUSE OF SHORTAGES AND INSTITUTIONAL PROBLEMS. SOUTHERN CALIFORNIA INTERESTS HAVE LONG STATED THEY WOULD NOT INTERFERE WITH THE OPERATION OF THE FEDERAL CENTRAL VALLEY PROJECT IN DELIVERING WATER AND POWER TO NORTHERN AND CENTRAL CALIFORNIA AREAS, AND ENACTMENT OF THIS LEGISLATION WOULD AMOUNT A GROSS BREACH OF FAITH. WE RESPECTFULLY URGE REJECTION OF S2676. WE FURTHER REQUEST THAT THIS MESSAGE BE READ INTO AND BE MADE A PART OF THE HEARING RECORD ON AUGUST 11, 1986.

FRIANT WATER USERS AUTHORITY
BY JAMES F SORENSEN
209 SOUTH LOCUSTL ST
VISALIA CA 93291

00:47 EST

IPMPOMX WSH

League of Women Voters of Escondido
P.O. BOX 921 - Escondido, California 92025

August 2, 1986

TO WHOM IT MAY CONCERN

We strongly urge passage of HR4468 (Packard) and SB 2676 (Wilson) in order to resolve the 20-year water rights struggle involving the San Luis Indian Water Authority.

Our League has consistently supported efforts to improve the lives of native Americans of North San Diego County.

Respectfully yours,

LEAGUE OF WOMEN VOTERS
OF ESCONDIDO

Lori Pfeiler

Lori Pfeiler, President

S. 2676--SECTION BY SECTION ANALYSIS

Sec. 1. Title - "San Luis Rey Indian Water Rights Settlement Act".

Sec. 2. Definitions - defines "Bands" (five Mission bands), the Central Valley Project, the terms "firm project water", Indian Water Authority, "local entities", "project use power", San Diego Aqueduct, and "settlement agreement".

Sec. 3. (a) Congressional findings - the reservations need a reliable water source; the River water is important to local communities and is not adequate to supply the needs of the Bands and the local entities; litigation has impaired the economic development of the Bands, resulting in continued high umemployment and dependence on federal funds, and has impeded conservation measures; settlement is needed to end litigation, to improve regional economy and to plan for water management; settlement would resolve claims of Bands, fulfill federal trust responsibility, and provide for reasonable contributions from the Bands and the local entities; the settlement includes these provisions: River waters above the intake to the Canal that are developed by the Bands and the local entities will be shared equally; 7,000 acre feet per year are guaranteed to the Bands; local entities make available Dams and Reservoirs and Canal free of charge to the Bands for the conveyance and storage of the 7,000 acre feet and contribute the Warner Ranch wellfield facilities for which the Bands will share O&M, development and, if necessary, replacement costs; the local entities are obligated to buy the Bands' water that is surplus to the needs of the Bands at 90 percent of the cost of getting the water elsewhere (reduced to 80 percent for any amounts above 7,000); the Bands assume responsibility for funding the Canal where it traverses the San Pasqual Reservation.

(b) Purpose - The Act's purpose is to enact a settlement of the water claims of the Bands that provides them a reliable source of water, promotes conservation, establishes a positive partnership between the Bands and the local entities, and fosters independent economic development for the Bands.

Sec. 4. Provides that sections 5 through 8 of the bill take effect only when all parties, including the U.S., have entered into a settlement agreement for the resolution of all claims and issues involved in all pending litigation among the parties, and when the Secretary determines that all legal requirements have been satisfied, including enactment of any necessary legislation and execution of necessary contracts, and when final dispositions are made in all pending suits.

Sec. 5. (a) Water Delivery - Requires the Secretary to deliver 22,700 acre feet of firm project water annually to the Indian Water Authority which in turn shall reimburse all O&M costs at rates charged CVP users and all costs associated with water conveyance in non-federal facilities; the obligation of the Secretary is eliminated if such delivery would require new federal construction, or if consent of non-federal facility owners cannot be obtained, or if required permits are not executed; requires Secretary to avoid additional water costs to CVP users.

(b) Requires Secretary to use CVP project use power to deliver the water and, if power is inadequate, authorizes Secretary of Energy to acquire needed additional power until adequate power is available from CVP; requires the Indian Water Authority to reimburse U.S. for O&M power costs; prohibits Secretary of Energy from using power needed for other purposes or, until December 31, 2004, by any CVP power customers under contract on date of enactment of this Act; and requires Secretaries to take steps to ensure that there will be no added power costs for project use purposes or to CVP customers before December 31, 2004.

(c) Authorizes Secretaries to enter into necessary agreements to fulfil their obligations under this Act.

Sec. 6. (a) Recognizes the Indian Water Authority and its power to act for the Bands as an inter-tribal entity based on tribal ordinances; provides that such ordinances cannot be revoked except by Congress and that modifications must be approved by the Secretary of the Interior and then only if he finds that the modification would not interfere with the ability of the Authority to carry out its obligations under this Act.

(b) Treats Authority as an Indian entity under federallaw; grants Authority power to enter into agreements to implement provisions of this Act; includes investment and management funds, provided that all income not needed for administration must be invested or used for economic development of the Bands and can not be used for per capita payments.

(c) Treats Authority as a Tribe for IRS purposes.

Sec. 7. (a) Grants Authority to devote to beneficial use any water obtained under this Act or any agreement, or any other water acquired from any source.

(b) Authorizes Authority to lease, sell, exchange, and manage water but prohibits any permanent alienation of such water except as part of the settlement agreement; any sale, lease or exchange of water must be by contract which must be approved by the Secrtary.

(c) Provides that the Authority may contract for power only as necessary for the delivery of the 22,700 acre feet of water as described in 5(a).

Sec. 8. (a) Grants exclusive authority to the Secretary of the Interior to lease, grant rights of way, or to deal with any other interest in land connected with the diversion, conveyance, and storage of the waters of the River.

(b) Requires approval by governing body of Band for alienation of any interest in individual trust land and entitles individual owner or allottee to just compensation for any taking.

Sec. 9. (a) Provides that this Act will not affect any question of law related either to the use of reserved Indian water other than that reserved for these five Bands or to whether the Bands' reserved water could be used off the reservations in the absence of this Act.

(b) States that the Act does not authorize the Authority to sell power separately from the water described in 5(a).

(c) Prevents the federal government from acquiring water or power or any facility through use of the eminent domain power.

(d) Provides that under this Act no implication can be made as to status of Authority under any other law if this Act is not passed or if section 6 does not take effect.

Sec. 10. Provides that new spending authority, if any, is subject to prior appropriations.

***

Los Angeles Times Sunday, Aug. 10, 1986

Editorials

Washington Has Chance to Clear Up Water Mess

Beginning with Senate hearings this week, Congress has the opportunity to settle a 17-year-old legal fight among five Indian bands and two North County water agencies over the rights to water that flows across Indian land.

If Congress passes and the President signs legislation carried by Rep. Ron Packard in the House and Sens. Pete Wilson and Alan Cranston in the Senate, it will end a lawsuit filed in 1969 over control of a canal that carries water to Lake Wohlford in Escondido from the San Luis Rey River and a nearby water-well field.

It would be fitting for the federal government to provide the final seal of approval for the complex compromise because it began the problem a century ago when the Interior Department signed away the rights of the Indians to the water that passed through their reservations.

Lengthy negotiations, assisted by Packard's office, have produced an agreement over how much water would belong to the La Jolla, San Pasqual, Rincon, Pala and Pauma Indian bands and how much would go to the Escondido Mutual Water Co. and the Vista Irrigation District. The settlement also provides for dividing the cost of operating the canal and water-well network.

But the last part of the package must come from the federal government—22,700 acre-feet a year of surplus federal water from the Sacramento-San Joaquin Delta. That water would be transported via the California Aqueduct to the Indians, who in turn would give part of it to the water agencies as partial compensation for operating the facilities.

But at this point, another long-standing water dispute enters the picture, as Central California water interests are unhappy at the thought of water from their region being shipped to Southern California. Despite the fact the federal government caused the problem in the first place, and despite the fact that this would be a minuscule portion of the water the government owns in the delta, they fear setting a precedent of transporting water from the Central Valley Project outside their region.

With both California senators and 36 of the state's 45 House members backing this legislation, objections from Central California should not be allowed to unravel a very delicately negotiated deal among the other parties. The federal government has an opportunity to clean up a mess it at least helped create, and it should do so without unnecessary delay.

MARK ANDREWS, NORTH DAKOTA, CHAIRMAN
BARRY GOLDWATER, ARIZONA
SLADE GORTON, WASHINGTON
FRANK H. MURKOWSKI, ALASKA
JAMES ABDNOR, SOUTH DAKOTA
JOHN MELCHER, MONTANA
DANIEL K. INOUYE, HAWAII
DENNIS DeCONCINI, ARIZONA
QUENTIN N. BURDICK, NORTH DAKOTA

PETER S. TAYLOR, STAFF DIRECTOR
MAX I. RICHTMAN, MINORITY STAFF DIRECTOR

United States Senate
SELECT COMMITTEE ON INDIAN AFFAIRS
WASHINGTON, DC 20510

August 7, 1986

MEMORANDUM

TO: Senator Mark Andrews, Chairman, and Members of the Select Committee on Indian Affairs, and Senator James A. McClure, Chairman, and Members of the Energy and Natural Resources Committee

FROM: Patricia Zell, Staff Attorney, Select Committee on Indian Affairs

THROUGH: Peter Taylor, Staff Director, Select Committee on Indian Affairs

RE: August 11, 1986 Hearing on S. 2676, a bill to provide for the settlement of water rights claims of the La Jolla, Rincon, San Pasqual, Pauma, and Pala Bands of Mission Indians in San Diego County, California, and for other purposes.

Background

The Mission Indian Bands were settled on five small reservations in the San Luis Rey River basin under the authority of the 1891 Mission Indian Relief Act. The San Luis Rey River rises in the Coast Ranges and flows westward along all five reservations into the Pacific Ocean.

In 1894, the United States issued rights of way across Indian and Federal land to the Escondido Irrigation District for the construction of a gravity-flow canal known as the Escondido Canal. The Escondido Canal originates on the La Jolla Indian Reservation and crosses portions of the La Jolla, Rincon, and San Pasqual Reservations enroute to Lake Wohlford. The District failed in 1905, and was purchased by the Escondido Mutual Water Company. In 1914, the government entered into a water rights contract with the company on behalf of the Bands, relating to rights of way, purchase of power, and establishing the right of the Rincon Band to the first 6 cubic feet per second (cfs) of the natural flow of the San Luis Rey River.

In 1911, William Henshaw purchased the 42,000 acre Warner Ranch, and in 1922, Henshaw entered into a contract with the United States, allowing Henshaw to construct a dam and reservoir on the upper San Luis Rey River, and to divert water from the river. Later that year, Henshaw deeded the ranch to the San Diego County Water Company, and the Company then contracted with the Escondido Mutual Water Company to coordinate the operation of the dam and reservoir with the operation of the Escondido Canal. In 1946, the Vista Irrigation District acquired the 42,000 acres of land and the dam, with the associated existing water rights.

Pending Litigation

Currently pending in the U.S. District Court for the Southern District of California are three cases that have been consolidated into one proceeding, Rincon Band of Mission Indians v. Escondido Mutual Water Co., in which the Bands, and the United States on their behalf, as trustee, seek to have all the contracts and permits granting Escondido and Vista various rights of way and water rights appurtenant to the Mission Indians' land declared void, to adjudicate the Federal reserved water rights of the Bands, and to recover money damages from Escondido and Vista for their continuing use of water under allegedly invalid contracts beginning in 1894. Proceedings have been stayed pending the outcome of settlement negotiations among the parties and a potential legislative resolution of the outstanding claims.

In addition to the federal district court litigation, the parties are also involved in a proceeding before the Federal Energy Regulatory Commission. The Bands and the United States intervened in FERC proceedings in the early 1970's, with respect to Escondido's effort to renew its Federal power license, seeking to either have the new license issued to the United States, or to impose conditions on any new license issued to Escondido and Vista. This proceeding has been through extensive hearings before the Commission, through review by the Ninth Circuit Court of Appeals, and to the Supreme Court. The Supreme Court held that section 4(e) of the Federal Power Act requires the Commission to accept without modification, conditions that the Secretary deems necessary for the adequate protection and utilization of the reservations. The Court remanded the case to the Ninth Circuit, which in turn, remanded the matter to FERC, where the case is currently pending.

Proposed Settlement

The settlement is predicated on two objectives: division of local water and the costs associated with its development and distribution among the Bands, Escondido, and Vista; and purchase of Federally-developed Central Valley Project water by the Bands for delivery to the San Luis Rey watershed, given the insufficiency of local supplies to meet the needs of the Indian and non-Indian communities.

Ninety percent of the locally-available water is presently used by Vista and Escondido. The remaining ten percent is allocated for use by the Bands. Under the proposed settlement, local water would be shared equally, with a 50% percent allocation to the Bands, and the remainder to Vista and Escondido. Thus, the Bands will have the right to make beneficial use of approximately 9,000 acre feet of local water annually, and to the extent that the local water is surplus to their needs, Escondido and Vista have agreed to purchase the first 7,000 acre feet of surplus water for 90% of Escondido's and Vista's cost of obtaining water from an alternative source. Any remaining surplus water would be purchased for 80% of the cost associated with obtaining alternative source water.

In addition, to assure a reliable supply of local water in drought conditions, Escondido and Vista have agreed to guarantee the Bands a minimum of 7,000 acre feet of local water per year to the extent that it is needed for the reservations. Costs of operating, maintaining, and if necessary, replacing local distribution facilities will continue to be borne by Escondido and Vista, but the Bands will assume all costs associated with covering or placing underground, the portion of the Escondido Canal that crosses the San Pasqual Reservation. The Bands, Escondido and Vista would share the costs of operating, maintaining, replacing, and further developing the Warner Wellfield facilities, with pumping power costs for the wellfield to be shared equally (50% by the Bands). The Bands would assume 40% of the operation and maintenance and new capital development costs.

Of the approximate one million acre feet of the Central Valley federal reclamation project water that is not under contract, S. 2676 authorizes the delivery of 22,700 acre feet through existing facilities operated by the state of California, the Metropolitan Water District of Southern California, and the San Diego County Water Authority for allocation to the Bands. The Bands would assume all of the costs associated with the use of the existing facilities to convey the Central Valley Project water from the Sacramento-San Joaquin Delta to northern San Diego County. No new facility construction is necessary. The Bands will pay the Federal government the operation and maintenance component of costs at the irrigation project use rate for Central Valley Project water, and the capital component would be assumed by the Federal government as foregone revenue.

For the power required to transport the Central Valley Project water from the Delta over the Tehachapi Mountains to the reservations, the Bands will assume the operation and maintenance component of costs associated with project use power, and the capital component would be assumed by the Federal government as foregone revenue from the sale of surplus power. Given the present balance of available surplus power that would be used to satisfy the terms of the settlement, it is projected that there will be no impact on existing project use or commercial firm power customers receiving power under existing contracts.

S. 2676 authorizes the establishment of an Indian Water Authority to lease, use or otherwise administer the Bands' water rights as confirmed by the settlement. Any lease or exchange of a water resource made pursuant to a contract by the Authority requires approval by the Secretary of the Interior, as trustee. The Bands agree to sell 6,000 acre feet of the Central Valley Project water to Escondido and Vista at cost, in exchange for the commitment of those entities to assume the cost of operating and maintaining local distribution facilities for use of water by the Bands. The bill precludes the Water Authority from permanently alienating any right to any water resource except to the local entities as part of the settlement agreement.

Administration Position

The Administration supports S. 2676, with a minor technical amendment that is proposed in the written testimony of the Western Area Power Administration of the Department of Energy. The Department of the Interior will testify on behalf of the United States in support of the S. 2676.

Legislative History

S. 2676 was introduced on July 22, 1986, by Senator Wilson for himself and Senator Cranston, and was referred to the Select Committee on Indian Affairs with instructions that when reported, the bill be referred to the Committee on Energy and Natural Resources for a period not to exceed fifteen calendar days. A companion, H.R. 3958, was introduced in the House of Representatives by Congressman Ron Packard for himself and three co-sponsors on December 16, 1985, and was referred to the Subcommittee on Water and Power Resources of the House Interior and Insular Affairs Committee. A second companion bill, H.R. 4468, was introduced by Congressman Packard, for himself and 37 co-sponsors on March 20, 1986, and was referred to the House Interior and Insular Affairs Committee. No hearings have been held on the House bills.

AGUA CALIENTE
BAND OF
CAHUILLA INDIANS

RESOLUTION NO. 22-86

WHEREAS, the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians have been involved in litigation over the rights to the waters of the San Luis Rey River since 1969; and

WHEREAS, the precedent set in Winters v. United States is the basis for the 5 Bands' claim to the water they are seeking; and

WHEREAS, a task force comprised of all participants in the case was formed in 1984 to negotiate a compromise agreement; and

WHEREAS, an "Agreement in Principle" was reached in December, 1985 which would disolve the historic case to the satisfaction of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands; and

WHEREAS, the terms, conditions and authority of the agreement is contained and specified in H.R. 4468, introduced in the House by Congressman Ron Packard; and

WHEREAS, the passage of H.R. 4468 is critical to the social, economic, and educational development of the 5 Bands and the general welfare of the approximately 4,000 (+) individual Band members who will benefit from a settlement;

NOW THEREFORE BE IT RESOLVED that the AGUA CALIENTE BAND OF CAHUILLA INDIANS strongly supports the passage of H.R. 4468 and commends the Congress for their sponsorship of legislation which will promote the economic redevelopment of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians of Southern California.

Richard M. Milanovich

Richard M. Milanovich, Chairman

I, the undersigned, the Secretary of the Agua Caliente Band of Cahuilla Indians, hereby certify that the Tribal Council is composed of five members of whom 5 constituting a quorum were present at a meeting whereof, duly called, and noticed, convened and held this 17th day of June, 1986; that the foregoing resolution was duly adopted at such meeting by the affirmative vote of 4-0 members and that said resolution has not been rescinded or amended in anyway.

Ray Leonard Patencio

Ray Leonard Patencio, Secretary

960 EAST TAHQUITZ WAY • SUITE 106 • PALM SPRINGS, CALIFORNIA 92262 • (619) 325-5673

CALIFORNIA INDIAN MANPOWER CONSORTIUM, INC.

RESOLUTION #PY85-005

WHEREAS, the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians have been involved in litigation over the rights to the waters of the San Luis Rey River since 1969; and

WHEREAS, the precedent set in Winters v. United States is the basis for the 5 Bands' claim to the water they are seeking; and

WHEREAS, a task force comprised of all participants in the case was formed in 1984 to negotiate a compromise agreement; and

WHEREAS, an "Agreement in Principle" was reached in December, 1985 which would dissolve the historic case to the satisfaction of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands; and

WHEREAS, the terms, conditions and authority of the agreement is contained and specified in H.R. 4468 is critical to the social, economic, and educational development of the 5 Bands and the general welfare of the approximately 4,000 (+) individual Band members who will benefit from a settlement:

NOW THEREFORE BE IT RESOLVED that the California Indian Manpower Consortium, Inc. strongly support the passage of H.R. 4468 and commends the Congress for their sponsorship of legislation which will promote the economic redevelopment of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians of Southern California.

CERTIFICATION

We, the undersigned Officers of the California Indian Manpower Consortium, Inc., do hereby certify that the foregoing resolution was adopted by the Board of Directors at a duly authorized meeting on June 28, 1986.

Benjamin Magante

Benjamin Magante, Chairman

Georgina L. Stanley

Georgina L. Stanley, Secretary

FINAL 8/6/84

I. FINDINGS AND PURPOSE

The Pauma Band of Mission Indians, in cooperation with the La Jolla, Rincon, Pala and San Pasqual Bands of Mission Indians (hereinafter the "Bands") does hereby make the following findings:

1. Prior to the diversion of the waters of the San Luis Rey river in the 1890's, the people of the Bands made use of the waters of the San Luis Rey River for domestic and agricultural purposes, which use was interrupted by that diversion;

2. The diversion of the San Luis Rey River has caused and continues to cause severe economic hardship and widespread unemployment to the people of the Bands due to their lack of an adequate and reliable source of water for domestic, agricultural, and economic development purposes;

3. Since 1969 the Bands have filed and have vigorously pursued their legal remedies to regain control of the diverted water, the diversion and delivery facilities, and damages for the loss of their water in the U.S. District Court, the U.S. Court of Claims, and the Federal Energy Regulatory Commission. In all such proceedings the Bands have acted together as a unit and in cooperation with each other;

4. The Bands' legal efforts have begun to produce

results, with a favorable district court opinion dealing with major aspects of the diversion in Rincon and La Jolla Bands of Mission Indians and the United States v. Escondido Mutual Water Co., et al., and with a Supreme Court decision holding that the Secretary of Interior has authority to impose conditions on the FERC license to protect the reservations on which the project is located.

5. Aside from righting historical wrongs, the Bands' purpose in the above legal efforts has been to establish their water rights, to gain control of the diversion facilities, and to be compensated for their deprivation of water since the 1890's. Now that these goals are being accomplished, various state and federal agencies and programs have made commitments to assist the Bands, both financially and technically, in making actual and productive use of their water rights for purposes of alleviating unemployment and promoting the large-scale economic development of the Bands' reservations, which development has been delayed primarily due to lack of a reliable and adequate water supply. However, these agencies and programs have conditioned their offers of such present and future assistance on the Bands' creation of a formal entity encompassing and representing the Bands as a unit, rather than separately, because the kind of large-scale economic development envisioned by the Bands is best accomplished as a single project, particularly as a demonstration project to act

as a model for all southern California Indian Bands and for all Indian tribes.

6. In order to satisfy the sources of financial and technical assistance, and in order to most effectively plan, create, operate, and maintain the unified and interrelated economic development projects which numerous technical studies identified as most feasible and practicable for the Bands' immediate and long-term economic development, the Bands now wish to create a separate and subordinate tribally-chartered entity which will serve as the Bands' vehicle for this economic development and the conduit through which federal and state assistance will be transmitted to and on behalf of the Bands.

7. The Bands wish to emphasize that the progress they have made to date in the efforts described above is largely attributable to the fact that they have always acted together in a cooperative effort to achieve their common goals [illegible] that each Band's individual interests in this regard are best served by the continuation of a common and unified effort, rather than by separate efforts by the individual Bands, whose individual populations, land bases, and resources could not produce as much of a return for the Bands as would the Bands' cooperative efforts with the other Bands;

8. To achieve the above goals, the Pauma Band of Mission Indians, in cooperation with La Jolla, Rincon, Pala, and San Pasqual Bands of Mission Indians, does hereby ordain and establish the San Luis Rey River Indian Water Authority whose nature, powers, purpose, scope of activities, and other characteristics and limitations are described below.

II. DEFINITIONS

The following terms, wherever used or referred to in this Ordinance, shall have the following respective meanings:

1. "Authority" - the San Luis Rey River Indian Water Authority.

2. "Absolute majority" - shall be six votes.

3. "Band" - one of the five Bands of Mission Indians which have established the Authority.

4. "Board" - the Board of Directors of the Authority.

5. "Executive Committee" - the Executive Committee of the Board of Directors of the Authority, which shall be composed of the President, Vice-President, Secretary, Treasurer and one member at large elected from the Board of Directors of the Authority. No more than one (1) member of the Executive Committee shall be from each of the five (5) Bands.

6. "Federal Government - includes the United States of America or any other agency or instrumentality, corporate or otherwise, of the United States of America.

7. "Bonds" - any bonds, notes, interim certificates, debentures, or other obligations issued by the Authority pursuant to this Ordinance.

8. "Obligee" - includes any bondholder, agent or trustee for any bondholder or lessor conveying to the Authority property used in connection with a project, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the Authority in respect to any project involving the development of the irrigations systems, power or recreational facilities undertaken by the Authority.

III. ORGANIZATION

1. The affairs of the Authority shall be managed by a Board of Directors composed of ten (10) members. Two (2) Directors and one (1) Alternate Director shall be from each Indian Band.

(a) The Board members shall be selected according to procedures to be determined by each Band. They shall be identified by written resolution.

(b) The term of office of all Directors and Alternate Directors shall be indefinite and shall continue until death, removal, resignation or replacement.

(c) The Board shall elect one of the Directors as President of the Board. The Board shall also elect from among its members a Vice-President, a Secretary, a Treasurer and a Member at Large. In the absence of the President, the Vice-President shall preside; and in the absence of both the President and Vice-President, the Secretary shall preside.

(d) Each Indian Band may remove its Director(s) and/or Alternate Director from the Board for whatever reason and by whatever process it desires. However, in the case of incapacity, misfeasance, malfeasance, inattention to duty, conflict of interest, or similar serious condition on the part of a Director or Alternate Director, the Board may, after informal consultation with the Director or Alternate Director in question, formally notify the governing body of the Band of the Director or Alternate Director in question of the reasons for its concern, and may suggest to that governing body whatever steps the Board thinks appropriate for the governing body to remedy the condition in question. The Board itself may not remove, suspend or otherwise interfere with the tenure in office of a Director or Alternate Director.

(e) The Directors and Alternate Directors, when acting as Directors, shall be entitled to compensation from the Authority for actual expenses, including traveling expenses, incurred in the discharge of their duties according to standards to be established by resolution of the Board, and any additional compensation that is determined to be appropriate by the Board.

(f) A majority (i.e., six, 6) of the ten (10) voting members of the Board shall constitute a quorum for the transaction of business, notwithstanding the existence of any vacancies.

(g) The Secretary shall keep complete records of all meetings and action taken by the Board, shall conduct the correspondence of the Board, and shall perform such other duties as may be assigned by the Board.

(h) The Treasurer shall keep full and accurate financial records, make periodic reports to the Board at such times as shall be designated or requested by the Board, and submit complete quarterly reports, in written form, to the elected officials of each band as required by Article VI, Section I, of this Ordinance. The Treasurer shall be bonded in such amount as is prescribed by the Board.

2. The Board shall have authority to exercise, by majority vote of those present and voting, any and all powers delegated to the Authority of this Ordinance, or any amendments thereto, except when specifically provided otherwise.

3. Meetings of the Board shall be held at regular intervals as provided in the By-Laws and be conducted pursuant to Roberts' Rules of Order. Emergency or special meetings may be called by any two Directors upon the best notice practicable under the circumstances.

4. No business shall be conducted by the Authority unless a quorum is present.

IV. POWERS OF THE AUTHORITY

1. The authority shall be a profit-making, non-stock corporation and shall have perpetual succession in its corporate name. The Authority shall be authorized to accept the assignment of any pre-existing contracts necessarily involved in the assumption of the operation of the Federal Energy Regulatory Commission Project No. 176 and the management of the Authority, and to accept assignment of all obligations under said contracts, as well as accepting any license for projects licensed by the Federal Energy Regulatory Commission.

2. The Authority shall have the following powers which it may exercise consistent with the purposes for which it is established:

(a) The General Council hereby gives its irrevocable consent to allowing the Authority specifically and on a case-by-case basis to sue and be sued in the Authority's corporate name, upon any contract, claim or obligation arising out of its activities under this Ordinance, and hereby authorizes the Authority to agree by contract to waive any immunity from suit which it might otherwise have; provided, however, that none of the Bands shall be liable for the debts or obligations of the Authority and this section shall not be construed as a waiver of any Band's individual sovereign immunity. All such consents and/or waivers of immunity from suit must appear by express and unequivocal language appearing on the face of the contract or other document, and cannot be inferred from circumstances or otherwise.

(b) To adopt and use a corporate seal.

(c) To enter into agreements, contracts and understandings with any governmental agency, federal, state or local (including any of the participating Bands), or with any person, partnership, corporation, Indian Tribe or Band; and to agree to any conditions attached to federal, state, local or commercial financial assistance. Notwithstanding anything to the contrary contained in this Ordinance or any other provision of law, the Authority is empowered to agree to any conditions attached to financial assistance relating to the determination of prevailing salaries or wages or payment of not less than prevailing salaries or wages or compliance with labor standards. The "Authority" may include in any contract let in connection with any project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor, and to comply with any conditions which may be attached to the receipt of financial aid.

In any contract with the federal government for annual contributions to the Authority, the Authority may obligate itself to convey to the federal government possession of, or title to, the project to which such contract relates, upon the occurrence of a substantial default (as defined in such contract) with respect to the covenant or conditions to which the Authority is subject. Such contract may further provide that, in case of such conveyance, the federal government may complete, operate, manage, lease, convey or otherwise deal with the project and funds in accordance with the terms of such contract: provided that if the contract requires that, as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the Authority the project as then constituted.

It is the purpose and intent of this Ordinance to authorize the Authority to do any and all things necessary or desirable to secure the financial aid or cooperation of the federal government in the undertaking, construction, maintenance or operation of any project by the Authority.

(d) To lease property from the Bands and others for such periods as are authorized by law, and to hold and manage or to sublease the same.

(e) To borrow money, to issue temporary or long-term evidence of indebtedness, and to repay the same. Corporate bonds shall be issued and repaid in accordance with the provisions of Section VI of this Ordinance.

(f) To pledge the assets and receipts of the Authority as security for its debts; and to acquire, sell, lease, exchange, transfer or assign personal property or interests therein.

(g) To acquire water, water rights, lands, rights-of-way, easements, and other property or interests in property, real and/or personal, for the use of the Authority or any of its member bands, by purchase, gift, or by any other lawful manner.

(h) To undertake and carry out studies and analyses of the water needs of the Bands, to prepare irrigation plans, to execute the same, to operate projects and to provide for the construction, reconstruction, improvement, extension, alteration or repair of any project or any part thereof.

(i) To lease, rent, sell or lease with option to purchase any property or interest in property, real or personal, including water and water rights owned by the Authority; to establish fees for the use of water and/or electrical power supplied by the Authority, and to make rules and regulations governing the use of all water and/or electrical power supplied by the Authority. Such rules and regulations as may be established shall set priorities governing the use and allocation of water and/or electrical power and provide for the discontinuance of the same for failure to pay fees, for waste of water, for deliberate destruction of the Authority's property, or for other reasons as determined by the Authority.

(j) To operate and maintain the facilities licensed by the Federal Power Commission as Project No. 176 and any other facilities that may be added to that project and to do all things necessary for that purpose.

(k) To establish and revise fees for water, water hookups, power and power hookups, which shall be set forth in the allocation timetable to be established pursuant to part 6 of this section.

(l) To establish rules for the priority of water and power hookups and conditions of water and power use.

(m) To purchase insurance in any stock or mutual company for any property of the Authority against any risks or hazards.

(n) To invest such funds as are not required for immediate disbursement under such conditions as may be prescribed by resolution of the Authority consistent with applicable law.

(o) To establish and maintain such bank accounts as may be necessary or convenient in the name of the Authority.

(p) To employ an executive director, technical and maintenance personnel, and such other officers and employees, permanent or temporary, as it may require; and to delegate to such officers and employees such powers or duties as the Board shall deem proper.

(q) To declare and pay cash dividends annually payable only from current profits or earned surplus. Such cash dividends shall be payable to the governing body of each member Band.

(r) To take such further actions as are commonly engaged in by corporate bodies of this character as the Board may deem necessary and desirable to effectuate the purposes of the Authority.

(s) To adopt such by-laws as the Board deems necessary and appropriate.

(t) To join or cooperate with any other irrigation district, water authority, power project or recreation project operating under the laws or ordinances of the federal government, state, or other Band in the exercise, either jointly or otherwise, of any or all of the powers of the Authority and such other irrigation district, water authority, power project or recreation project for the purpose of financing (including but not limited to the issuance of bonds, notes or other obligations and giving security therefore), planning, undertaking, owning, constructing, operating or contracting with respect to a water project or projects of the Authority or such other districts, water authorities, agencies, power projects or recreation projects. For such purpose the Authority may, by resolution, prescribe and authorize any other irrigation districts, water authorities, power projects or recreation projects so joining or cooperating with the Authority, to act on the Authority's behalf with respect to any or all powers which may be exercised by the Authority, as the Authority's agent, or otherwise, in the name of the Authority or in the name of such irrigation districts, water authorities, power projects or recreation projects to the extent permitted by applicable law.

3. No ordinance or other enactment of the Band with respect to the acquisition, operation or disposition of Band proerty shall be applicable to the Authority in its operation pursuant to this Ordinance unless specifically provided herein.

4. Whenever the Authority is the employer, contractor or subcontractor concerning the operation of the Authority or any of its projects, the Authority shall publicly announce and pursue a policy of providing employment preference to members of federally-recognized Indian tribes living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation, as authorized by 41 C.F.R. 60-1.5(a)(6). The Authority may require that any contractor or subcontractor performing work for the Authority also publicly announce and pursue such a preference in employment.

5. In connection with any federal contracts or grants to the Authority, the Authority shall require to the greatest extent feasible that preferences and opportunities for training and employment in connection with the administration of such contracts or grants be given to members of federally-recognized Indian tribes, and the Authority shall further

provide preference to Indian organizations and to Indian-owned economic enterprises as defined in 25 U.S.C. § 1452 in the award of contracts, subcontracts and subgrants in connection with the administration of such federal contracts or grants as authorized by 25 U.S.C. § 450e(b).

6. The Band hereby grants and delegates to the Authority the power to control, manage, deliver and allocate the water resources of the five Bands that are subject to the Authority's management and control according to an allocation timetable to be established by resolution/ordinance of the Authority, consistent with the allocation of the water resource and income derived directly therefrom as is provided herein.

V. BONDS

1. The Authority may issue bonds from time to time in its discretion for any of its corporate purposes and may also issue refunding bonds for the purpose of paying or retiring bonds previously issued by it. The Authority may issue such types of bonds as it may determine, including bonds on which the principal and interest are payable: (a) exclusively from the income and revenues of the project financed with the proceeds of such bonds, or with such income and revenues, together with any grants from the federal government in aid of such projects; (b) exclusively from the income and revenues of certain designated projects, whether or not they were financed in whole or in part with the proceeds of such bonds; or (c) from its revenues generally. Any of such bonds may be additionally secured by a pledge of any revenues of any project, projects or other property of the Authority.

2. No member of the Board of the Authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

3. The bonds and other obligations of the Authority shall not be a debt of a Band and the bonds and obligations shall so state on their face.

4. Bonds of the Authority are declared to be issued for an essential public and governmental purpose and to be public instrumentalities and, together with interest thereon

and income therefrom, shall be exempt from taxes to the full extent permitted by applicable law. The tax exemption provisions of this Ordinance shall be considered part of the security for the repayment of bonds and shall constitute, by virtue of this Ordinance and without necessity of being restated in the bonds, a contract between (a) the Authority and the Band, and (b) the bondholders and each of them, including all transferees of bonds from time to time.

5. Bonds shall be issued and sold in the following manner:

(a) Bonds of the Authority shall be authorized by a resolution adopted by the vote of an absolute majority of the Board and may be issued in one or more series.

(b) The bonds shall bear such dates, mature at such times, bear interest at such rates, be in such denominations, be in such form, either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payments at such places, and be subject to such terms of redemption, with or without premium, as such resolution may provide.

(c) The bonds may be sold at public or private sale at not less than par.

(d) In case any of the Directors of the Authority whose signatures appear on any bonds or coupons ceases to be directors before the delivery of such bonds, the signature shall, nevertheless, be valid and sufficient for all purposes, the same as if the directors had remained in office until delivery.

6. Bonds of the Authority shall be fully negotiable. In any suit, action or proceedings involving the validity or enforcement of any bond of the Authority or the security therefor, any such bond reciting in substance that it has been issued by the Authority pursuant to this Ordinance shall be conclusively deemed [illegible] have been issued for such purpose and the project for which such bond was issued shall be conclusively deemed to have been planned, located and carried out in accordance with the purposes and provisions of this Ordinance.

7. Any further limitations on the authority of the Authority to issue bonds, terms of such bonds, security for repayment of such bonds, redemption of such bonds, default of repayment of such bonds, and similar matters shall be included in the resolution of the Board authorizing the issuance of such bonds, which resolution shall conform to all applicable laws and regulations.

VI. MISCELLANEOUS

1. The Authority shall submit detailed quarterly reports, signed by the President of the Board, to the elected officials of each Band showing: (a) the comprehensive financial status of the Authority; (b) the status of all construction projects, including costs, and beginning, actual and projected completion dates; (c) the overall plan for irrigation development and/or amendments to the original or amended plans; and (d) such other information as the Authority or the respective Councils shall deem pertinent.

2. No construction in connection with an irrigation, power project or recreation project which is designated to take place within the boundaries of any Band's reservation shall be permissible without express knowledge and approval of the governing body of the affected Reservation. Such approval must be in the form of a written resolution passed in accordance with the governing documents of the Band and such resolution may impose reasonable conditions or restrictions on any such irrigation, power or recreation project.

3. Any Director shall have the right to inspect any Authority records and projects at any reasonable time.

4. The Board, in its discretion, may indemnify a Director or officer of the corporation for any criminal or civil monetary liability incurred while such Director or officer was carrying out his official duties and was acting in good faith.

5. No Director shall receive compensation for services rendered to the corporation unless such compensation is approved by the members of the Board.

6. By appropriate resolution, the Authority shall prescribe regulations governing the extent to which any Director, Alternate Director, officer or employee of the Authority may acquire, either voluntarily or involuntarily, any interest, direct or indirect, in any property or project of the Authority. The guiding principle of such regulations shall be that full and prompt disclosure of all such interests shall be made to the Board in writing, and that all such possible conflicts of interest presented thereby shall be mitigated, either by requiring the person in question to divest himself/herself of each such interest in a reasonable time, or by requiring such person to refrain or abstain from taking any action in his/her official capacity that might appear to be improper with regard to that interest, depending on the magnitude, directness, and nature of the apparently conflicting interest.

Such regulations shall not apply to an undivided interest which a person may have in the property of a Band which that person has in common with all other members of that Band, nor shall they disable a legitimate Indian business from conducting ordinary business with the Authority, nor prevent any such person from acquiring any interest in the notes, bonds, or other indebtedness of the Authority, provided that full disclosure is made and mitigation required, as provided above.

7. Except as otherwise provided by this Ordinance, all projects of the Authority shall be subject to the planning, zoning, sanitary and building regulations of the Band on whose reservation the project is situated.

8. The property of the Authority is declared to be public property used for essential public and governmental purposes and such property and the Authority are exempt from all taxes and special assessments of the Bands. The Authority shall have the authority to impose reasonable restrictions on access to and use of all property of the Authority.

9. Except as otherwise provided herein, all property, including funds acquired or held by the Authority pursuant to this Ordinance, shall be exempt from levy and sale by virtue of any execution, and no execution or other judicial process shall be issued against the same, nor shall any judgment against the Authority be a charge or lien upon such property; provided, however, that the provisions of this section shall not apply to or limit the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the Authority on its rents, fees or revenues or the right of the federal government to pursue any remedies conferred upon it pursuant to the provisions of this Ordinance.

10. The preceeding paragraph of this Ordinance shall not apply to the extent that the Authority has expressly and unequivocally waived its sovereign immunity from suit, as provided in this Ordinance.

VII. COOPERATION IN CONNECTION WITH PROJECTS

1. For the purpose of aiding and cooperating in the planning, undertaking, construction or operation of projects, the Pauma Band agrees that:

(a) It will not levy or impose any real or personal proprty taxes or special assessments upon the Authority or any project operated by the Authority.

(b) It will furnish or cause to be furnished to the Authority all services and facilities of the same character and to the same extent as the Band furnishes from time to time without cost or charge to dwellings and business on the Reservation.

(c) Insofar as it may lawfully do so, it will grant such variances from any present or future building code or other ordinances of the Band as are reasonable and necessary to promote economy and efficiency in the development and administration of any project, and, at the same time, safeguard health and safety, and make such changes in any zoning of the site and surrounding territory of any project as are reasonable and necessary for the development and protection of such project and the surrounding territory.

(d) It will do any and all things, within its lawful powers, necessary or convenient to aid and cooperate in the planning, undertaking, construction or operation of projects.

2. The provisions of paragraph 1 of this section shall remain in effect with respect to any project, so long as the project is: (i) owned by a public body or governmental agency; or (ii) while any contract between the Authority and any entity for loans or annual contributions, or both, in connection with such project remains in force and effect; or (iii) while any bonds issued in connection with such project or any monies due to any federal agency in connection with such project remain unpaid, whichever period is the longest. If at any time title to, or possession of, any project is held by any public body or governmental agency authorized by law to engage in the development or administration of irrigation and/or power projects, including the federal government, the provisions of this section shall inure to the benefit of and be enforced by such public body or governmental agency.

VIII. DISSOLUTION

In the event of dissolution of the Authority, the net proceeds from the sale of the assets of the Authority, after payment of all outstanding debts and obligations of the Authority, shall be distributed to the Councils of the respective member Bands in the same manner as cash dividends are paid. Dissolution shall occur only on the unanimous consent of all five (5) Bands, as manifested by resolutions of each Band specifically repealing the respective ordinances creating this Authority.

IX. PRINCIPAL PLACE OF BUSINESS

The official mailing address and principal place of business of the Authority shall be determined by the Board of Directors. The Authority's principal place of busines and mailing address shall be located in San Diego County, California.

X. APPROVAL BY SECRETARY OF THE INTERIOR

With respect to any financial assistance contract between the Authority and the federal government, the Authority shall obtain the approval of the Secretary of the Interior or his authorized designee, if required.

To the extent required by law, this Ordinance and any contracts, resolutions, or other actions of the Authority shall be subject to the approval of the Secretary of the Interior or his authorized designee.

XI. RATIFICATION

The five Bands recognize that the primary reason that they have enjoyed considerable success in asserting and defending their water rights for the purposes described above is that they have acted in cooperation with each other to achieve goals which none might attain alone. Therefore, this Ordinance shall not become operative unless and until it, and the similar ordinances establishing the Authority by the other four Bands, are all duly enacted and adopted by the General Council of each of the five respective Bands.

XII. WITHDRAWAL

By enacting and adopting this Ordinance, the ____________ Pauma ____________ Band of Mission Indians determines that, in principle, the Authority created hereby should be a permanent feature of the economies, resources, government and sovereignty of all five Bands. However, the Band recognizes that conditions may change in the future to such an extent that one or more Bands may wish to withdraw from the Authority. Such withdrawal may occur only if the Authority unanimously adopts a resolution authorizing such withdrawal, and then only on such conditions which shall be specified in the resolution authorizing the withdrawal, as will sufficiently protect and promote the interests and viability of the withdrawing Band, the non-withdrawing Bands, and the Authority.

XIII. DISPUTES

In the event that a dispute arises between one or more of the five Bands, or between a Band and the Authority, concerning the business of the Authority, the allocation or distribution of the water and/or power managed by the Authority, the distribution or disposal of the income generated by the activities of the Authority, or any matters within the scope of this Ordinance, or the activities of the Authority, the parties to the dispute will do their utmost to resolve the dispute informally, calling on other Bands, governmental entities, experts, or others if necessary for assistance. If all such informal efforts fail to resolve the dispute to the satisfaction of the parties, the dissatisfied Band, acting through one of its directors, shall present to the Secretary of the Board of Directors a written resolution of the governing body of the said band requesting that the dispute be submitted to binding arbitration.

The Band filing the protest shall select and compensate one arbitration board member and the Authority shall select and compensate another. These two arbitrators shall select a third whose compensation shall be shared by the Authority and the complaining band.

By enacting and adopting this Ordinance, the Pauma Band of Mission Indians does hereby unconditionally agree to submit all such disputes to binding arbitration, as described above, and to abide by and submit to determination of the dispute by the selected arbitrators. In order to guarantee that it will be so bound and will so submit, the Pauma Band of Mission Indians hereby gives its consent to suit and does hereby waive its sovereign immunity from unconsented suit in any civil action brought by another of the five Bands, or by the Authority, in the United States District Court for the Southern District of California to enforce such a final determination by the arbitration panel. This waiver of sovereign immunity extends only to such enforcement, and not to any other subject, and will not extend to a redetermination by the federal court of the merits of the dispute unless the said federal court so requires. In the event that the said federal court determines that it has no jurisdiction over such a civil action brought to enforce a determination of the arbitration panel or if it otherwise declines to exercise its jurisdiction, then the same action may be brought in the Superior Court of the State of California for the County of San Diego to the same extent, under the same conditions, and with the same waiver by this Band of its sovereign immunity as if it had been brought in the said federal court.

XIV. DISTRIBUTION OF NET INCOME

After all operating expenses, salaries and other ordinary business expenses of the Authority have been paid by the Authority, the net income of the Authority shall be distributed to the five Bands according to a formula to be proposed by the Board of Directors subject to the approval of each Band.

XV. AMENDMENT

This Ordinance may be amended by approval of the governing bodies of three of the five Bands.

CHOICE OF LAWS

This agreement is entered into on the Pauma, La Jolla, Rincon, Pala and San Pasqual Indian Reservations, and therefore the laws of the State of California will not govern its interpretation. If any dispute should arise between the parties concerning the construction or interpretation of this Ordinance, all parties agree to submit the dispute to the San Luis Rey Indian Water Authority, and its decision concerning the construction or interpretation will be final and binding upon all parties, except insofar as arbitration may be invoked. Nothing in this Ordinance shall be interpreted as a waiver of the sovereign immunity of the San Luis Rey Indian Water Authority from suit, unless specifically so provided.

CERTIFICATION

We, the undersigned, duly elected members of the Pauma Executive Committee, do hereby certify that the foregoing Ordinance was adopted by the members of the Pauma General Council at a general meeting on Sept. 23, 1984, by a vote of 27 "for" and 0 "against," at which meeting a quorum of 27 adult eligible voteres were present.

Patricia A. Dixon
Pauma Tribal Chairman

Leland A. Majel
Pauma Vice-Chairman

Christobel C. Rivera
COMMITTEE MEMBER
ACTING SEC/TREAS.

Campo Band of Mission Indians

RESOLUTION - 1986

WHEREAS, the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians have been involved in litigation over the rights to the waters of the San Luis Rey River since 1969; and

WHEREAS, the precedent set in Winters v. United States is the basis for 5 Band's claim to the water they are seeking; and

WHEREAS, a task force comprised of all participants in the case was formed in 1984 to negotiate a compromise agreement; and

WHEREAS, an "Agreement in Principle" was reached in December, 1985 which would disolve the historic case to the satisfaction of the Pala, Pauma, Rincon, La Jolla, and San Pasqual Bands, and

WHEREAS, the terms, conditions and authority of the agreement is contained and specified in H.R. 4468, introduced in the House by Congressman Ron Packard; and

WHEREAS, the passage of H.R. 4468 is critical to the social, economic, and educational development of the 5 Bands and the general welfare of the approximately 4,000 (+) individual Band members who will benefit from a settlement;

NOW THEREFORE BE IT RESOLVED that the Campo Band of Mission Indians strongly supports the passage of H.R. 4468 and commends the Congress for their sponsorship of legislation which will promote the economic redevelopment of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians of Southern California.

CERTIFICATION

We, the undersigned, hereby certify that the foregoing resolution was adopted at a duly called Executive Committee Meeting of the Campo Band of Mission Indians on June 30, 1986 by a vote of 5 FOR, 0 OPPOSED, and 0 ABSTAINING and that said resolution has not been recinded or amended in any way.

Ralph Goff
Ralph Goff, Chairman

Barbara Cuero
Barbara Cuero, Vice-Chairman

Harry Cuero Jr
Harry Cuero, Jr., Treasurer

Yolanda Cuero, Secretary

Rebecca Hyde
Rebecca Hyde, Committee

Nancy Boudreau, Committee

yc

1779 CAMPO TRUCK TRAIL, CAMPO, CALIFORNIA 92006 (619) 478-9046

Chemehuevi Indian Tribe

P.O. BOX 1976 • CHEMEHUEVI VALLEY, CALIFORNIA 92363 • (619) 858-4531

CHEM. R. 86- 23

A resolution supporting the passage of H.R. 4468 and commending the Congress for their sponsorship of this legislation.

WHEREAS, the Chemehuevi Indian Tribe is an American Indian Tribe, organized pursuant to the Federal Indian Reorganization Act of June 18, 1934 and is federally recognized by the United States Government through the Secretary of the Interior, with the Chemehuevi Tribal Council as it's governing body; and

WHEREAS, the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians have been involved in litigation over the rights to the waters of the San Luis Rey River since 1969; and

WHEREAS, the precedent set in Winters v. United States is the basis for the 5 Bands' claim to the water they are seeking; and

WHEREAS, a task force comprised of all participants in the case was formed in 1984 to negotiate a compromise agreement; and

WHEREAS, an "Agreement in Principle" was reached in December, 1985 which would disolve the historic case to the satisfaction of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands; and

WHEREAS, the terms, conditions and authority of the agreement is contained and specified in H.R. 4468, introduced in the House by Congressman Ron Packard; and

WHEREAS, the passage of H.R. 4468 is critical to the social, economic, and educational development of the 5 Bands and the general welfare of the approximately 4,000 (+) individual Band members who will benefit from a settlement;

NOW THEREFORE BE IT RESOLVED, that the Chemehuevi Indian Tribe strongly supports the passage of H.R. 4468 and commends the Congress for their sponsorship of legislation which will promote the economic redevelopment of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians of Southern California.

CERTIFICATION

The foregoing resolution was presented at a regular tribal council meeting held on the 28 day of June, 1986, with a quorum present. Motion was made by Tina Haynes, seconded by Mary Drum, and approved by a vote of 5 yeses, 0 noes, and 0 abstentions.

Richard Alvarez

Richard Alvarez, Chairman

Tina Haynes, Acting Secretary/Treasurer

COAST INDIAN COMMUNITY of the RESIGHINI RANCHERIA

Post Office Box 529 · Klamath, California 95548 · (707) 482-2431

RESOLUTION

RESOLUTION NO: 86-15
DATE APPROVED: June 26, 1986

RESOLUTION SUPPORTING THE BANDS OF MISSIONS INDIANS OVER WATER RIGHTS OF THE SAN LUIS REY RIVER

WHEREAS, the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians have been involved in litigation over the rights to the waters of the San Luis Rey River since 1969; and

WHEREAS, the precedent set in Winters V. United States is the basis for the 5 Bands claim to the water they are seeking; and

WHEREAS, a task force comprised of all participants in the case was formed in 1984 to negotiate a compromise agreement; and

WHEREAS, an "Agreement in Principle" was reached in December, 1985 which would dissolve the historic case to the satisfaction of the Pala Pauma, Rincon, La Jolla and San Pasqual Bands; and

WHEREAS, the terms, conditions and authority of the agreement is contained and specified in H.R. 4468, introduced in the House by Congressman Ron Packard; and

WHEREAS, the passage of H.R. 4468 is critical to the social, economic, and educational development of the 5 Bands and the general welfare of the approximately 4,000 (+) individual Band members who will benefit from a settlement;

RESOLUTION NO: 86-15
DATE APPROVED: June 26, 1986

NOW THEREFORE BE IT RESOLVED, that the Barona Band of Indians strongly supports the passage of H.R. 4468 and commends the Congress for their sponsership of legislation which will promote the economic redevelopment of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians of Southern California.

CERTIFICATION

As President and/or Vice-President of Resighini Rancheria Business Council, I do hereby certify that at a meeting duly called, noticed and convened on the 26th day of June, 1986 where a quorom of 3 officers of the Business Council duly adopted this resolution by a vote of 3 FOR 0 AGAINST 0 ABSTAIN and said resolution has not been rescinded or amended in any way.

(President and/or Vice-President)

[illegible] 86
(Date)

RESOLUTION

No. 86-63

WHEREAS, the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians have been involved in litigation over the rights to the waters of the San Luis Rey River since 1969; and

WHEREAS, the precedent set in Winters v. United States is the basis for the 5 Bands' blaim to the water they are seeking; and

WHEREAS, a task force comprised of all participants in the case was formed in 1984 to negotiate a compromise agreement; and

WHEREAS, an "Agreement in Principle" was reached in December, 1985, which would disolve the historic case to the satisfaction of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands; and

WHEREAS, the terms, conditions and authority of the agreement is contained and specified in H.R. 4468 is critical to the social, economic, and educational development of the 5 Bands and the general welfare of the approximately 4,000 (+) individual Band members who will benefit from a settlement;

NOW, THEREFORE BE IT RESOLVED that the Fort Mojave Indian Tribe strongly supports the passage of H.R. 4468 and commends the Congress for their sponsorship of legislation which will promote the economic redevelopment of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians of Southern California.

CERTIFICATION

We, the undersigned, as Chairperson and Secretary of the Fort Mojave Tribal Council do hereby certify that the Fort Mojave Tribal Council is composed of seven (7) members of whom four (4) constituting a quorum were present at a meeting on this Second (2nd) day of July, 1986, and that the foregoing Resolution was adopted by the affirmative vote of five (5) members.

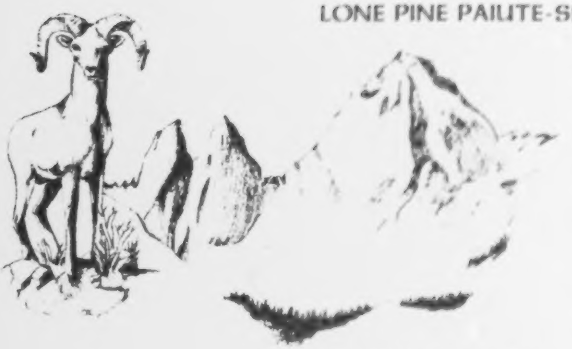
COUNCIL MEMBERS PRESENT:
Nora Garcia (y)
Elda Butler (y)
Kendall Guerrero (y)
Jeannette Otero (y)
Gary Arrison (y)

FORT MOJAVE TRIBAL COUNCIL

Nora Garcia, Chairperson

Kendall Guerrero, Secretary

LONE PINE PAIUTE-SHOSHONE RESERVATION
1101 SOUTH MAIN STREET
LONE PINE, CALIFORNIA 93545
(619) 876-5414



RESOLUTION
NO. 14-86

WHEREAS, the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians have been involved in litigation over the rights to the waters of the San Luis Rey River since 1969; and

WHEREAS, the precedent set in Winters v. United States is the basis for the 5 Bands' claim to the water they are seeking; and

WHEREAS, a task force comprised of all participants in the case was formed in 1984 to negotiate a compromise agreement; and

WHEREAS, an "Agreement in Principle" was reached in December, 1985 which would disolve the historic case to the satisfaction of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands; and

WHEREAS, the terms, conditions and authority of the agreement is contained and specified in H.R. 4468, introduced in the House by Congressman Ron Packard; and

WHEREAS, the passage of H.R. 4468 is critical to the social, economic, and educational development of the 5 Bands and the general welfare of the approximately 4,000 (±) individual Band members who will benefit from a settlement;

NOW THREFORE BE IT RESOLVED, that the Lone Pine Paiute/Shoshone Reservation strongly supports the passage of H.R. 4468 and commends the Congress for their sponsorship of legislation which will promote the economic redevelopment of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians of Southern California.

CERTIFICATION

We, the undersigned, hereby certify that the foregoing resolution was adopted at a Special called General Membership meeting of the Lone Pine Indian Reservation held on JUNE 17, 1986, with a quorum present, by a vote of 13 in favor; 0 opposed; with 0 abstentions, and that said resolution has not been recinded or amended in any way.

ATTEST

Neddeen Naylor
Neddeen Naylor, Tribal Chairperson

Mary L. Hunter
Mary L. Hunter, Tribal Secretary

MORONGO BAND OF MISSION INDIANS
11581 POTRERO ROAD
BANNING, CALIFORNIA 92220

RESOLUTION
NUMBER 18-86

WHEREAS, the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians have been involved in litigation over the rights to the waters of the San Luis Rey River since 1969; and

WHEREAS, the precedent set in Winters v. United States is the basis for the 5 Bands' claim to the water they are seeking; and

WHEREAS, a task force comprised of all participants in the case was formed in 1984 to negotiate a compromise agreement; and

WHEREAS, an "Agreement in Principle" was reached in December, 1985 which would disolve the historic case to the satisfaction of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands; and

WHEREAS, the terms, conditions and authority of the agreement is contained and specified in H.R. 4468, introduced in the House by Congressman Ron Packard; and

WHEREAS, the passage of H.R. 4468 is critical to the social, economic, and educational development of the 5 Bands and the general welfare of the approximately 4,000 (+) individual Band members who will benefit from a settlement;

NOW THEREFORE BE IT RESOLVED that the Morongo Band of Mission Indians strongly supports the passage of H.R. 4468 and commends the Congress for their sponsorship of legislation which will promote the economic redevelopment of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians of Southern California.

CERTIFICATION

We, the undersigned, hereby certify that the foregoing resolution was adopted at a duly called Council meeting of the Morongo Tribal Council held on June 30, 1986 with a quorum present, by a vote of 5 "for" 0 "opposed" and 0 "abstentions, and that said resolution has not been recinded or amended in any way.

ROBERT MARTIN, CHAIRMAN

Paul Martin
BUSINESS COMMITTEE MEMBER

BUSINESS COMMITTEE MEMBER

Mary Ann Andreas
BUSINESS COMMITTEE MEMBER

BUSINESS COMMITTEE MEMBER

Rodney Mathews
BUSINESS COMMITTEE MEMBER

Charles Martin
BUSINESS COMMITTEE MEMBER

San Diego County Water Authority
2750 Fourth Avenue, San Diego, California 92103-6295 (619) 297-3218
(A Public Agency Organized June 9, 1944)

Francesca M. Krauel, Chairman
Dale Mason, Vice Chairman
Michael D. Madigan, Secretary
Lawrence R. Michaels, General Manager
and Chief Engineer
Paul D. Engstrand, General Counsel

August 6, 1986

The Honorable Mark Andrews, Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

**Re: San Luis Rey Indian Water Rights
Settlement Act, S. 2676**

Dear Senator Andrews:

The San Diego County Water Authority has recently been informed that hearings on the San Luis Rey Indian Water Rights Settlement Act, S. 2676, are scheduled to be heard before your Committee on August 11, 1986. This letter is to inform you that on July 10, 1986, the Board of Directors of the San Diego County Water Authority passed a resolution, a copy of which is enclosed, endorsing the San Luis Rey Indian Water Rights Settlement Act. Although the resolution was addressed specifically to the House version, H.R. 4468, it is our understanding that the Senate version, S. 2676, is substantially the same and, we therefore wish your Committee to note the Water Authority's approval of this type of settlement.

Sincerely,

Lawrence R. Michaels

Lawrence R. Michaels
General Manager and Chief Engineer
SAN DIEGO COUNTY WATER AUTHORITY

RESOLUTION NO. 86-29

RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN DIEGO COUNTY WATER AUTHORITY URGING SUPPORT FOR AND CO-OPERATION IN IMPLEMENTING THE SETTLEMENT OF THE WATER RIGHTS DISPUTE BETWEEN THE CITY OF ESCONDIDO, THE ESCONDIDO MUTUAL WATER COMPANY, THE VISTA IRRIGATION DISTRICT, THE LA JOLLA, RINCON, SAN PASQUAL, PAUMA AND PALA BANDS OF MISSION INDIANS, AND THE UNITED STATES OF AMERICA.

WHEREAS, for over fifteen years legal actions have been pending in the United States District Court for the Southern District of California and before the Federal Energy Regulatory Commission involving the conflicting claims of the City of Escondido, the Escondido Mutual Water Company, the Vista Irrigation District, the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians, and the United States of America to the waters of the upper San Luis Rey River water system in northern San Diego County, California; and

WHEREAS, the City of Escondido, the Escondido Mutual Water Company, the Vista Irrigation District, and the La Jolla, Rincon, San Pasqual, Pauma and Pala Bands of Mission Indians, with the active cooperation and participation of personnel from the United States Departments of Justice and the Interior, have entered into an Agreement in Principle for the complete resolution of the water rights dispute among them; and

WHEREAS, the implementation of the Agreement in Principle will require the passage of an Act of Congress and the negotiation of agreements with the State of California Department of Water Resources, the Metropolitan Water District of Southern California, and the San Diego County Water Authority for the use of facilities owned and operated by those entities for the conveyance of water provided by the United States under the Act to the area of the Indians' reservations in San Diego County; and

WHEREAS, Congressman Packard was instrumental in assisting the parties in reaching their Agreement in Principle and has continued to work tirelessly to secure the passage of H. R. 4468, a bill which he introduced in the House of Representatives with the co-sponsorship of all of San Diego County's Congressmen and which will lay the groundwork for the implementation of the Agreement in Principle;

NOW THEREFORE BE IT RESOLVED, that the San Diego County Water Authority supports H. R. 4468 and the settlement for which it provides and respectfully memorializes the Congress and the President of the United States to take such steps as are necessary to effect its prompt enactment into law; and

BE IT FURTHER RESOLVED, that the San Diego County Water Authority will cooperate to the full extent possible consistent with its obligations to its member agencies in negotiating with the above named parties for their use of its facilities to deliver water provided by the federal government and implement the above described settlement.

PASSED, APPROVED and ADOPTED this 10th day of July, 1986.

Francesca M Krauel
Chairman, Board of Directors
San Diego County Water Authority

ATTEST:

Secretary, Board of Directors
San Diego County Water Authority

I, JANET RAVIART, Executive Secretary of the Board of Directors of SAN DIEGO COUNTY WATER AUTHORITY, do hereby certify that the above and foregoing is a full, true and correct copy of Resolution No. 86-29 of said Board and that the same has not been amended or repealed.

Dated: August 6, 1986

Janet Raviart

Executive Secretary
Board of Directors
San Diego County Water Authority

TYME MAIDU TRIBE
BERRY CREEK RANCHERIA
1779 Mitchell Avenue
Oroville, California 95966
(916) 534-3859

RESOLUTION # 86-17

WHEREAS, the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians have been involved in litigation over the rights to the waters of the San Luis Rey River since 1969; and

WHEREAS, the precedent set in Winters v. United States is the basis for the 5 Bands' claim to the water they are seeking; and

WHEREAS, a task force comprised of all participants in the case was formed in 1984 to negotiate a compromise agreement; and

WHEREAS, an "Agreement in Principle" was reached in December, 1985 which would resolve the historic case to the satisfaction of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands; and

WHEREAS, the terms, conditions and authority of the agreement is contained and specified in H.R. 4468, introduced in the House by Congressman Ron Packard; and

WHEREAS, the passage of H.R.4468 is critical to the social, economic, and educational development of the 5 Bands and the general welfare of approximately 4,000 (+) individual Band members who will benefit from a settlement;

NOW THEREFORE BE IT RESOLVED that the Tyme Maidu Tribe of the Berry Creek Rancheria strongly supports the passage of H.R. 4468 and commends the Congress for their sponsorship of legislation which will promote the economic redevelopment of the Pala, Pauma, Rincon, La Jolla, and San Pasqual Bands of Mission Indians of Southern California.

CERTIFICATION

This is to certify that the following Resolution was duly adopted by the Tyme Maidu Tribe of the Berry Creek Rancheria at a regular meeting held on June 29, 1986 at which a quorum was present by a vote of 12 yes, 0 no and 0 abstaining, and that this Resolution has not been changed, recinded or amended in any was.

Gus Martin, Tribal Chairperson — July 1, 1986
Date

ATTEST: Thelma E. Edwards
Thelma Edwards, Tribal Secretary — July 1, 1986
Date

VIEJAS INDIAN RESERVATION

Anthony R. Pico, Chairman
Alan L. Barrett, Vice Chairman
Drucilla L. Espinoza, Secretary
Steven Te Sam, Treasurer
Thomas J. Hyde, Councilman
James L. Te Sam, Councilman
Raymond Cuero, Councilman

P. O. Box 908
Alpine, CA 92001
(619) 445-3810

RESOLUTION

WHEREAS, the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians have been involved in litigation over the rights to the waters of the San Luis Rey River since 1969; and

WHEREAS, the precedent set in Winters v. United States is the basis for the 5 Bands' claim to the water they are seeking; and

WHEREAS, a task force comprised of all participants in the case was formed in 1984 to negotiate a compromise agreement; and

WHEREAS, an "Agreement in Principle" was reached in December, 1985 which would disolve the historic case to the satisfaction of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands; and

WHEREAS, the terms, conditions and authority of the agreement is contained and specified in H.R. 4468, introduced in the House by Congressman Ron Packard; and

WHEREAS, the passage of H.R. 4468 is critical to the social, economic, and educational development of the 5 Bands and the general welfare of the approximately 4,000 (+) individual Band members who will benefit from a settlement;

NOW THEREFORE BE IT RESOLVED that the Viejas Band of Indians strongly supports the passage of H.R. 4468 and commends the Congress for their sponsorship of legislation which will promote the economic redevelopment of the Pala, Pauma, Rincon, La Jolla and San Pasqual Bands of Mission Indians of Southern California.

CERTIFICATION

We, the undersigned, hereby certify that the foregoing resolution was adopted at a duly called Council/General Membership meeting of the Viejas Band of Indians held on JUNE 24, 1986, with a quorum present, by a vote of 6 in favor; 0 opposed; with 0 abstentions, and that said resolution has not been recinded or amemded in any way.

Anthony R. Pico, Chairman

Alan [illegible]. Barrett, Vice Chairman

ABSENT

Drucilla L. Espinoza, Secretary

Steven Te Sam, Treasurer

Thomas [illegible]. Hyde, Councilman

James L. Te Sam, Councilman

Raymond Cuero, Councilman

[illegible]

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
supporting
Negotiated Settlement of Indian Water Rights Disputes

April 11, 1986

WHEREAS, Indian tribes have mostly unquantified and unused reserved water rights which, if put to beneficial use, could displace existing uses of water and significantly impair investments and local and regional economies; and

WHEREAS, the public interest and sound public policy require the resolution of Indian water rights disputes in a manner that is least disruptive to existing uses of water; and

WHEREAS, the United States has developed many major water projects that compete for use of waters claimed by Indians and is therefore responsible to both Indians and non-Indians to assist in resolving conflicts between them for such waters; and

WHEREAS, comprehensive judicial decrees are often necessary to quantify and prioritize water rights but protracted litigation is often complex, expensive, and time-consuming; and

WHEREAS, it is highly desirable to develop procedures which achieve quantifications fairly, efficiently, and with the least cost; and

WHEREAS, negotiated quantification of claims is such a process; and

WHEREAS, the advantages of negotiated settlements include: (i) the ability to be flexible and to tailor solutions to the unique circumstances of each situation; (ii) the ability to promote conservation and sound water management practices; and (iii) the ability to establish the basis for cooperative partnerships between Indian and non-Indian communities to replace the adversarial and often hostile relationships that currently exist; and

WHEREAS, negotiation of certain claims is more likely to be successful if coupled with "physical solutions," primarily development of federal water projects and improved water delivery and application techniques; and

WHEREAS, several water right settlement bills have passed or are pending before the Congress; and

WHEREAS, Indian tribes and non-Indian interests are currently involved in water rights settlement negotiations in several western states which, if successfully concluded, will probably require the enactment of federal legislation and in some cases the appropriation of funds;

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council endorses the policy of encouraging negotiated settlements of Indian water rights disputes based on its belief that in many cases such negotiated settlements offer the best possible solution to a critical problem that affects all of the Western States; and

BE IT FURTHER RESOLVED, that the Western States Water Council urges the United States, as the trustee of Indians and Indian tribes, to assert strong leadership in the promotion of quantification of claims in the context of federally financed solutions; and

BE IT FURTHER RESOLVED, that the Western States Water Council calls upon the Congress, the President, and the Secretary of the Interior to promote and encourage negotiated settlements of Indian water rights disputes and to assist in the implementation of fair and equitable settlements in a spirit that generously recognizes that the federal government has unique responsibilities and commitments to Indian tribes, as well as important obligations to holders of vested water rights under state law.